



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 28, 1994

Ms. Kelly A. Dempsey  
Assistant City Attorney  
Legal Department  
City of Victoria  
P.O. Box 1758  
Victoria, Texas 77902-1758

OR94-756

Dear Ms. Dempsey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 29719.

The City of Victoria (the "city") has received a request for a certain police file relating to an allegation of indecency with a minor. You have submitted the requested information to us for review and claim that sections 552.101 and 552.108 of the Government Code except it from required public disclosure.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert section 552.101 in conjunction with section 34.08 of the Family Code, which provides in pertinent part:

- (a) Except as provided in Subsections (b) and (c) of this section, the reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes consistent with the purposes of this code under regulations adopted by the investigating agency.

*See also* Open Records Decision Nos. 587 (1991) (holding that Government Code section 552.023 cannot operate to give any individual special right of access to information within protection of Family Code section 34.08); 440 (1986) (information in Austin

Police Department file collected in chapter 34 investigation remains confidential under section 34.08).<sup>1</sup>

The alleged perpetrator in this instance was “a person other than a person responsible for a child’s care, custody, or welfare.” See Fam. Code § 34.012 (defining “[p]erson responsible for a child’s care, custody, or welfare”). Section 34.05, which sets forth the standards and procedures for child abuse reports and investigations, provides, in pertinent part:

If the report alleges child abuse or neglect in a location other than a facility operated, licensed, certified, or registered by a state agency and by a person other than a person responsible for a child’s care, custody, or welfare, the [Department of Protective and Regulatory Services] is not required to investigate the report. *The appropriate state or local law enforcement agency shall investigate that report if that agency determines an investigation should be conducted.*

*Id.* § 34.05(a) (emphasis added).

We understand that the city did not report the allegations of child abuse to the Department of Protective and Regulatory Services (the “department”) and that the department did not conduct an investigation of the allegations. Rather, the city, through its police department, concluded that an investigation of the allegations should be conducted. Hence, section 34.05 of the Family Code required the police department to investigate the allegations. The requested information thus relates to an investigation conducted under chapter 34, disclosure of which is authorized only for purposes consistent with the purposes of the Family Code under regulations adopted by the city under section 34.08 of the Family Code. You advise us that the city has not promulgated regulations authorized under section 34.08. Accordingly, the city must withhold the requested information under section 552.101 of the Government Code. As we resolve this request under section 552.101, we need not address section 552.108 of the Government Code at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

---

<sup>1</sup>Subsections (b) and (c), which provide for disclosure of investigative materials to adoptive parents and prospective adoptive parents, respectively, are not applicable in this instance.

LRD/GCK/rho

Ref: ID# 29719

Enclosures: Submitted documents

cc: Mr. James Kaltman  
Texas Council Risk Management Fund  
P.O. Box 26655  
Austin, Texas 78755  
(w/o enclosures)