



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 30, 1994

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

OR94-628

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# 28097.

The City of Victoria (the "city") has received a request for a certain police file relating to an allegation of indecency with a minor. The requestor is the father of the alleged child victim. You have submitted the requested information to us for review and claim that section 552.101 of the Government Code exempts it from required public disclosure.

Section 552.101 of the Government Code exempts 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 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 section 552.023 of the act cannot operate to give any individual a special right of access to information within the protection of section 34.08 of the Family Code); 440 (1986) (information in Austin Police

Department file collected in chapter 34 investigation remains confidential under section 34.08).¹

You advise us that the requested information relates to a criminal investigation arising from an investigation initiated by the Texas Department of Protective and Regulatory Services. See Fam. Code § 34.05. Disclosure of the requested information, or any part thereof, is therefore authorized only for purposes consistent with the purposes of the Family Code under regulations adopted by the city.² We are not aware that the city has promulgated regulations authorized under section 34.08 of the Family Code. Accordingly, the city must withhold the requested information under section 552.101 of the Government Code.

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 this office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

Ref.: ID# 28097

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

²We note, however, that the Texas Department of Protective and Regulatory Services has promulgated a regulation, section 700.103, title 40 of the Texas Administrative Code, which governs release of Child Protective Services ("CPS") case information to CPS clients. Section 700.103 provides:

A child protective services client may *review* all information in the client's case record except the identity of the complainant, information exempted from disclosure under the Open Records Act, and information exempted under other state laws. [Emphasis added.]

See also 40 T.A.C. § 734.11 (governing the release of case record information that the department collects in determining eligibility to receive department services). Although we do not address here whether the requestor is a client of CPS for purposes of the above-quoted regulation, we do note that the requestor may be entitled to review the information in the possession of CPS under the regulation.

Enclosures: Submitted documents

cc: Mr. Gerald D. Umphres
2107 North Ben Jordan
Victoria, Texas 77901
(w/o enclosures)