



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 28, 1995

Captain Jimmy Stevens
Service Division
Amarillo Police Department
200 South East Third Avenue
Amarillo, Texas 79101-1514

OR95-246

Dear Captain Stevens:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30347.

The Amarillo Police Department (the "department") received an open records request for a copy of an affidavit that was referenced in an "Incident Report" pertaining to the department's investigation of a report of child abuse. You state that you wish to withhold the affidavit "because the disclosure may subject the witness to possible intimidation or harassment."

Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 (1982) at 1, we will raise section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," because the release of confidential information could impair the rights of third parties, and because the improper release of confidential information constitutes a misdemeanor. *See* Government Code § 552.352.

Chapter 34 of the Family Code concerns, among other things, reports of child abuse to local law enforcement agencies. Section 34.08(a) of the Family Code provides:

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*. [Emphasis added.]

Subsections (b) and (c) relate to the disclosure of records concerning an investigation of an adopted child to the adoptive parents, prospective adoptive parents, or to the child upon reaching adulthood. Neither subsection is applicable to the current request.

Because you have not cited any specific regulation that the department has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, the record at issue is confidential pursuant to section 34.08(a) of the Family Code. See Open Records Decision No. 440 (1986) at 2. Accordingly, the department must withhold this record.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/RWP/rho

Ref.: ID# 30347

Enclosures: Submitted documents

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(w/o enclosures)