



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 3, 1997

Mr. Todd Givens
Assistant City Attorney
City of Dallas
Office of the City Attorney
Municipal Building
Dallas, Texas 75201

OR97-0463

Dear Mr. Givens:

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# 104172.

The City of Dallas Police Department (the "department") received a request for copies of a police report in which a person has been charged with sexual assault. You assert that the information is excepted from disclosure because of common law privacy. We have considered your argument and have reviewed the information submitted.

Section 552.301(b) requires a governmental body to submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office a copy of the written request for information.

Pursuant to section 552.303(c) of the Government Code, this office notified you by letter dated December 20, 1996 that you had failed to submit the information required by section 552.301(b). We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e) failure to comply would result in the legal presumption that the information at issue is public information.

You did not provide our office with the information that was requested. Therefore, as provided by section 552.303(e), the information that is the subject of this request for information is presumed to be public information. Information that is presumed public must be released unless a governmental body demonstrates a compelling interest to withhold the information to overcome this presumption. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302);

Open Records Decision No. 319 (1982). Where information is made confidential by other law or where third party interests are at issue, a compelling reason exists to overcome the presumption that information is open under section 552.303(e). See Open Records Decision No. 150 (1977).

The information submitted to this office contains references to an alleged sexual assault of a minor. Where a child is the victim of alleged or suspected abuse or neglect, section 261.201(a) of the Family Code may be applicable. Section 261.201(a) provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We conclude that the information submitted to this office is related to an incident of alleged child abuse or neglect, and contains records developed in an investigation under chapter 261 of the Family Code. We are not aware of any rules promulgated by the department which permit the dissemination of this type of information. The records are therefore confidential by law. Thus, we find that a compelling reason exists to overcome the presumption of openness in this case and the department must withhold the records in their entirety.¹

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

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¹As we resolve this matter under section 261.201(a) of the Family Code, we need not address your argument under common-law privacy.

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Enclosures: Submitted documents

cc: Lisa Lowry
c/o YMCA Casa Shelter
2640 Webb Chapel Extension
(w/o enclosures)