



The Attorney General of Texas

September 23, 1986

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Ms. Wanda L. Williams
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Open Records Decision No. 438

Re: Whether allegations made in an "application for complaint" and the identity of the complainant may be withheld under the Open Records Act, article 6252-17a, V.T.C.S.

Dear Ms. Williams:

A reporter has asked the city of Bryan to disclose a "complaint submitted . . . in the case on city property involving [a city supervisor] and another city employee." You wish to deny this request under the Open Records Act, article 6252-17a, V.T.C.S.

In your request letter, you explained that the complaint at issue here, which you referred to as an "application for complaint,"

is filled out by an individual, a citizen, not by a police officer or prosecutor and not under the direction of a police officer or prosecutor. It is filled out at the Police Station after the incident has occurred and usually no further report is made by any police officer. The application is then forwarded to me. The application is a request for investigation and prosecution. I contact the complainant and do any other investigation that is needed, then decide whether prosecution is in order or not.

You concede that these complaints are similar to police offense reports, whose contents are generally available to the public. See, e.g., Houston Chronicle Publishing Company v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App. - Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 408 (1984). You contend, however, that there are enough differences between these two documents to warrant the conclusion that applications for complaint may be withheld under the "false light privacy" theory. You argue:

In the Houston Chronicle case, the court always discussed the Offense Report and other records as including 'names of investigating officers,' 'names of arresting officers,' 'officer's speculation,' 'officer's view,' indicating that the court is considering those records created by police officers. There is no indication that the court considered writings of individual citizens, non-police officers, in its decision.

Second, my experience has been that in filling out these Applications for Complaint, citizens use words and phrases that do not reflect what actually occurred. Citizens use words like 'assault,' 'harassment,' and 'fraud' without understanding the legal implication of those words. Many Applications for Complaint allege no real crime at all and are simply 'gripe forms.' In this sense, the Application for Complaint is very different from the Offense Report because it is completed by an untrained person, using ambiguous or inaccurate words and phrases, and thus creating the possibility that the real occurrence was quite different from the description given.

In general, I believe that the Application for Complaint is excepted under section 3(a)(1) under the law of 'false light' privacy as discussed in Open Records Decision Nos. 372 and 397 (1983). As stated above, the Application is full of inaccuracies, often bold-faced lies, and allegations that are highly offensive to a reasonable person. In a large portion of the cases, I have serious doubts as to the truth of the information in the application. The public interest is minimal due to the nature of the incidents: barking dogs, name-calling, fist-fights, and other Class C misdemeanors handled by this office.

At the outset, we note that we need not consider whether any privacy theory embraces the identity of the person against whom the allegations in this complaint were made. The fact that the reporter's request for information referred to the supervisor by name shows that the reporter knew the identity of the subject of the complainant when he submitted his request. We need only consider whether the city must disclose the allegations in this complaint and the identity of the complainant.

Essentially, your false light privacy argument is that applications for complaint are inherently so inaccurate that we should hold that, as a matter of law, they place their subjects in a "false light." We reject this approach, because we believe that accurate generalizations about these applications are impossible. Even if police officers are generally better versed than laymen in the nuances of words such as "assault" and "harassment," it does not follow that all applications for complaint can be presumed to be erroneous or that all offense reports can be assumed to be correct. On the contrary, a representative sample of both documents would likely reveal that some applications were phrased very precisely and that some offense reports were quite deceptive. In emphasizing the differences between these documents, moreover, you overlooked one essential respect in which they are identical: each contains only an allegation that someone committed some offense. In both instances, the accuracy of the words used in framing the allegations and in relating the facts will not be known until the appropriate dispute resolution process has been completed.

Rather than generalize about the veracity of the statements contained in applications for complaint, we believe that we must consider these applications on a case-by-case basis. This has been our approach in the past. In Open Records Decision No. 372 (1983), for example, we considered whether a school district could withhold a transcript of a telephone conversation between a former district employee and a vendor with whom the district had previously dealt. The conversation concerned a criminal enterprise to misappropriate district property, and during its course a number of people were mentioned. Many of those named were never charged with crimes. In discussing the false light privacy theory, the decision stated:

In Open Records Decision No. 308 (1982), this office applied the law of 'false light' privacy to a situation (1) where scurrilous information about a particular individual that was put in an agency's file had been communicated to the public body by an anonymous source, (2) where the agency made a determination that the information was not true, and (3) where we judged the public interest favoring disclosure to be minimal. Under those circumstances, a release of the information would have been in reckless disregard of its truth. The opinion was careful, however, to note that the attorney general is not equipped to determine the truth or falsity of particular information in the manner of a trial court.

Manifestly, we cannot determine the 'truth' or 'falsity' of the information at issue here, but it

is our duty -- as it would be the duty of an appellate court if the question were presented to it -- to declare whether the evidence presented to us for the purpose of justifying non-disclosure of material is sufficient to show that release of information that might place persons in a false light would be in reckless disregard of its truth. In such contexts, reckless conduct is not measured by whether a reasonably prudent man would publish the information, or would investigate before publishing it. There must be sufficient evidence to permit the conclusion that the custodian of the information in fact entertains serious doubts as to the truth of the information.

The decision concluded that

a governmental body may withhold information on the basis of false light privacy, only if it finds, based upon the weight of evidence demonstrable to this office, that there is serious doubt about the truth of the information. In addition, the information must be highly offensive to a reasonable person and the public interest in disclosure must be minimal.

Applying these standards, we conclude that false light privacy does not embrace the allegations in the application before us. Although you have argued that applications for complaint generally "[are] full of inaccuracies, often bold-faced lies," you have not asserted that this complaint contains false information; on the contrary, the complaint contains a notation stating that prosecution was not recommended because the subject of the complaint was administratively disciplined and because the complainant's statements were uncorroborated. The fact that the subject of the complaint was disciplined, moreover, indicates that the allegations in the complaint are not false. In releasing these allegations, therefore, the city would not be disclosing "information that might place persons in a false light . . . in reckless disregard of its truth." Open Records Decision No. 372 (1983).

You argue that disclosure of these allegations would be "highly offensive to a reasonable person." Even if this is true, this information is hardly more offensive than that which is routinely found in police offense reports, and identifying information in offense reports has consistently been held to be available to the public. See, e.g., Heard v. Houston Post Company, 684 S.W.2d 210 (Tex. App. - Houston [1st Dist.] 1984, no writ); Houston Chronicle Publishing Company v. City of Houston, *supra*. You also contend that

[t]here also is no legitimate concern to the public: the incident occurred inside a city building after the building had been closed to the public, and the incident did not involve any service to the public. Both the complainant and the defendant are city workers and no member of the public was present at the time.

If anything, however, these factors support the conclusion that the public has a legitimate interest in this information. The subject of the complaint was a city supervisor. The public clearly has a legitimate interest in knowing the details of an apparently well-founded accusation of misconduct levelled against a city supervisor, arising out of an incident "occurr[ing] inside a city building after the building had been closed to the public." The public also has a genuine interest in knowing why the decision not to prosecute was made.

To place someone in a "false light," information about that person must be false. The evidence before us indicates that the allegations in this complaint are not false. Because these allegations are not false, because they are less offensive to a reasonable person than are allegations in a police offense report, and because the public has a legitimate interest in these allegations, we conclude that the false light privacy theory does not apply here.

You also argue that common law privacy excepts this information. False light privacy is one aspect of common law privacy. In addition, information may be withheld on common law privacy grounds if its disclosure would cause an impermissible "intrusion," "disclosure," or "appropriation." Open Records Decision No. 372 (1983). Relying on the criteria discussed in Open Records Decision No. 372, we conclude that none of these categories is implicated here.

You finally argue that section 3(a)(8) excepts this information. Section 3(a)(8) applies if the release of information would "unduly interfere" with law enforcement or prosecution. Open Records Decision Nos. 434 (1986); 287 (1981). You have stated that no prosecution is anticipated. No evidence indicates that the release of this information would unduly interfere with law enforcement. Section 3(a)(8), therefore, is inapplicable.

We next consider whether the city may withhold the identity of the complainant. This information is normally available to the public under Houston Chronicle Publishing Company v. City of Houston, supra. In Open Records Decision No. 339 (1983), however, this office held that common law privacy may embrace the identity of a complainant:

In instances of serious sexual assault, the appellate courts sometimes shield a victim by referring to her only by her initials. See King v. State, 631 S.W.2d 486, 488 (n. 3) (Tex. Crim. App. 1982). In our opinion, common law privacy permits the withholding of the name of every victim of a serious sexual offense. See Open Records Decision No. 205 (1978). The mere fact that a person has been the object of a rape or attempted rape does, we believe, reveal 'highly intimate or embarrassing facts' about the victim, and, in our view, disclosure of this fact would be 'highly objectionable to a person of ordinary sensibilities.' Although there is certainly a strong public interest in knowing that a crime has been committed, we do not believe that such interest requires the disclosure of the names of the victims.

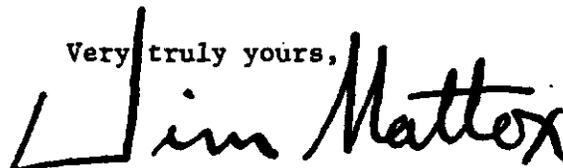
Accord, Open Records Decision No. 393 (1983). The essence of these decisions is that common law privacy protects the identity of a complainant who is the victim of a serious and embarrassing crime. In this instance, the allegations charge the subject of the complaint, not with any crime, much less a serious and embarrassing crime, but with sexual harassment and assault. While not meaning in any way to downplay the seriousness of these charges, we conclude that they fall far short of alleging the kind of misconduct that must occur to invoke common law privacy under the rationale of Open Records Decision Nos. 393 and 339.

You also contend, however, that additional factors warrant the application of the privacy theory in this case. Specifically, you argue that the events described in this complaint exacerbated physical and emotional difficulties experienced by the complainant as a result of other events in her life, and that the complainant's identity must be withheld to prevent further complications from occurring. This argument, however, overlooks the fact that the common law privacy test articulated in Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 685 (Tex. 1976) is an objective rather than a subjective test. Under that case, information may be withheld on common law privacy grounds only if it is highly intimate or embarrassing, such that a reasonable person would object to its release. This test permits no inquiry into facts about a specific individual which would make that person more sensitive than the person of ordinary sensibilities. Accordingly, in applying the common law privacy test, this office is not free to consider the individual sensibilities of this particular complainant as an aspect of common law privacy. We may consider only the issue of whether a reasonable person of ordinary sensibilities would object to the disclosure of the

information in this complaint, and we answer that question in the negative. In this context, it is also worth noting that we do not have before us any objective evidence, medical or otherwise, indicating that the publication of the complainant's name would jeopardize her physical or emotional condition; instead, we have only your supposition that this may occur.

Open Records Decision Nos. 393 and 339 establish that the identity of a complainant, which generally is public information, may be withheld only in unique circumstances. Such circumstances do not exist here. The city, therefore, must release the identity of this complainant. As we have previously noted, it must also release the allegations in this complaint.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive style with a large, stylized "J" and "M".

J I M M A T T O X
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