



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 12, 1994

Mr. Merrill E. Nunn
City of Amarillo
Legal Department
P.O. Box 1971
Amarillo, Texas 79186-0001

Open Records Decision No. 628

Re: Whether the identities of juvenile victims of crimes or accidents are protected from required public disclosure under sections 552.101, 552.103(a) and 552.108 of the Texas Open Records Act, Title 5, chapter 552, Government Code (RQ-692)

Dear Mr. Nunn:

On behalf of the City of Amarillo (the "city"), you ask whether information concerning juvenile crime and accident victims is excepted from required public disclosure under the Texas Open Records Act (the "act"), Government Code, chapter 552.¹ The city has received a request for disclosure of the names of all "juveniles who are victims of crimes or accidents investigated by the Amarillo Police Department."

The city first objects that the request constitutes an improper "standing request" and argues that therefore the city need not furnish the requested information. This office has previously ruled that a governmental body need not honor a standing request; however, a "standing request" refers to a request to provide information "on a periodic basis," *see* Open Records Decision No. 465 (1987); a weekly basis, *see* Open Records Decision No. 476 (1987); or to provide information that has not yet been recorded, *see* Open Records Decision No. 452 (1986). The request in this case is for the names of juvenile crime and accident victims as of the date of the request. The requestor does not ask for information on an ongoing basis or for information not yet recorded; therefore, the request is not a standing request, and the city must comply with the request to the extent the information is not excepted from disclosure under the act.

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

The city claims also that section 552.108 excepts the requested information from disclosure. Section 552.108 excepts from disclosure:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, and prosecution of crime

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution

In a criminal case that is under active investigation, section 552.108 exempts from disclosure all information except that normally found on the first page of the offense report. See generally *Houston Chronicle Publishing Co. 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. 127 (1976). Although such front page information is generally available to the public, it may be withheld in active cases using the same test that exempts information in closed cases under section 552.108. Open Records Decision No. 366 (1983) at 3. Once a case is closed, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." See *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 434, 444 (1986).

In some circumstances, a victim of a crime may be identified as a complainant or a witness or both. If the victim is identified as the complainant, the name is included in the information found on the first page of an offense report. Open Records Decision No. 127 at 4. As noted above, such information is generally open and may be withheld in active or closed cases only if disclosure "will unduly interfere with law enforcement." If the victim is identified only as a witness, the name would be exempt from disclosure in active cases. *Id.* In closed cases the law enforcement agency must show

from an examination of the facts of the particular case that disclosure might either subject the witnesses to possible intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement officers.

Open Records Decision No. 297 at 2. We think such evidence of harassment or retaliation would be sufficient proof of undue interference with law enforcement even in cases where the victim is identified as the complainant, regardless of whether the case is active or closed. For example, in cases involving gang violence, a law enforcement agency may wish to withhold the complainant's identity for fear of gang retaliation. If a law enforcement agency explains to this office that gang retaliation may occur, the

complainant's name may be withheld because release of the information would unduly interfere with law enforcement. Therefore, section 552.108 of the Government Code may in some circumstances except from disclosure the identity of a juvenile crime victim if a law enforcement agency can show how its release will unduly interfere with law enforcement.

The city also suggests that section 552.103 may except the information from disclosure. Section 552.103(a) excepts information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or political subdivision, as a consequence of the person's office or employment, is or may be a party and

(2) that the attorney general or attorney of the political subdivision has determined should be withheld from public inspection.

Information may be withheld under section 552.103 if a governmental body can demonstrate that the information relates to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). However, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982).² Therefore, the applicability of section 552.103 must be determined on a case by case basis.

Next, the city contends that the requested information is protected by common-law privacy and constitutional privacy under section 552.101 of the act. Although common-law privacy does not prohibit disclosure of the identities of all juvenile crime and accident victims, it does apply in some cases. The identities of juvenile victims of serious sexual offenses must be withheld on the basis of common-law privacy; and in limited circumstances, constitutional privacy may protect the identities of juvenile victims of other types of crimes or accidents.

²In Open Records Decision No. 597 (1991), this office concluded that section 552.103 did not exempt from disclosure the type of information normally found on the front page of an offense report when criminal litigation is pending. However, we based this conclusion on the presumption that the information had already been made available to the defendant in the litigation. Open Records Decision No. 597 at 3. In this case, we have no evidence to conclude that the requested information has been made available to parties in litigation with the state.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Under section 552.101, information may be withheld on the basis of common-law privacy if it is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and there is no legitimate public interest in its disclosure. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision Nos. 579 at 2, 562 at 9, 561 at 5, 554 at 3 (1990); 438 at 6 (1986); 409 at 2 (1984); 339 at 2 (1982). Information found on the first page of a police offense report, including "identification and description of complainant," is ordinarily disclosable. *Houston Chronicle Publishing Co.*, 531 S.W.2d at 187. Noting that "[v]ictims of sexual abuse are the only persons thus far excepted on privacy grounds, from the rule of *Houston Chronicle* that requires disclosure of the names of complainants," this office has ruled that the names of burglary victims are not excepted from public disclosure by common-law privacy. Open Records Decision No. 409 at 2. The identity of a shooting victim is not *per se* excepted from disclosure pursuant to common-law privacy, Open Records Decision Nos. 422 (1984) at 2; and the identities of adult victims of family violence are likewise not *per se* excepted from disclosure. Open Records Decision No. 611 (1992).

We note, however, that the identities of juvenile victims of sexual offenses are protected by common-law privacy. In Open Records Decision No. 339 (1982), this office held that all victims of serious sexual offenses had a common-law privacy interest that prevented disclosure of identifying information. In Open Records Decisions 393 (1983) and 440 (1986), we specifically held that common-law privacy protects from disclosure information that identifies or tends to identify juvenile victims of sexual offenses. We therefore reiterate our holdings in those prior decisions that the identity of juvenile victims of serious sexual offenses is protected by common-law privacy as incorporated into section 552.101 of the act. *See also Masby v. State*, 703 S.W.2d 714 (Tex. App.—Corpus Christi 1985, no writ) (finding that state's interest in protecting youthful witness from embarrassment and undue trauma sufficient to justify partial or complete exclusion of the public during the child's testimony in a case involving sexual assault of the child); Code Crim. Proc. art. 57.02 (victims of sexual offenses may choose to use a pseudonym in all public records including police reports).³

³Some judicial determinations regarding a newspaper's ability to publish the identity of a victim of a sexual offense turn on whether the identity of the victim is already in the public record. *See Globe Newspaper Co. v. Superior Court for the County of Norfolk*, 457 U.S. 596 (1982) (although mandatory closure of a courtroom by statute is unconstitutional, a trial court can determine on a case-by-case basis whether closure is necessary to protect the welfare of a minor victim where the name of the victim is already in the public record); *Star Telegram v. Walker*, 834 S.W.2d 54 (1992) (court cannot prevent a newspaper from publishing a rape victim's identity when lawfully obtained from the public record). In the present case, we have no information to indicate that the victims' names are obtainable from any public

In addition to common-law privacy, section 552.101 protects from disclosure matters which are deemed private pursuant to constitutional law. In *Industrial Foundation*, the Texas Supreme Court held that constitutional privacy, and thus section 552.101, protects matters within previously recognized and protected "zones of privacy"; these zones of privacy include matters relating to marriage, procreation, contraception, family relationships, child rearing, and education. 540 S.W.2d at 678. Once a determination is made that a matter is within a constitutionally protected zone of privacy, one must balance this privacy interest against the public's interest in access to such information. See Open Records Decision No. 455 (1987) at 7 (citing federal cases discussing constitutional disclosural privacy). There may be circumstances where disclosure of the identity of a juvenile crime or accident victim may detrimentally influence family relationships or child rearing, or may involve the "most intimate aspects of human affairs." See Attorney General Opinion JM-81 (1983) (holding that the identities of parents of victims of Sudden Infant Death Syndrome are protected by constitutional privacy); Open Records Decision No. 455 at 5. See generally Fam. Code § 11.19(d) (in appeals of suits affecting the parent-child relationship, either party or the appellate court may move to identify the parties by fictitious names or by their initials only). However, a determination of the applicability of constitutional privacy must be made on a case-by-case basis, weighing the individual's right to privacy against the public's interest in disclosure of the information. See Open Records Decision No. 455 at 7.

Section 552.101 also exempts from disclosure information that is confidential by statute. Section 34.08 of the Family Code makes records of law enforcement agencies generated pursuant to an investigation of child abuse under the Family Code confidential by law. Section 34.08 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.⁴ [Footnote added.]

If any of the identities of juvenile victims sought by the requestor are contained in "reports, records, and working papers used or developed in an investigation" under

(footnote continued)

record other than the department's police reports. Therefore, the above cases are not controlling on this issue.

⁴Subsections (b) and (c), both inapplicable here, provide for review of investigation information by an adoptive parent of a child or by an adult who was subject to a chapter 34 investigation as a child.

chapter 34 of the Family Code, then such information is deemed confidential by law by section 34.08 and is excepted from disclosure by section 552.101. *See* Open Records Decision No. 587 (1991).⁵

Finally, the city asks if section 51.14 of the Family Code protects the identities of juvenile crime victims. This section applies only to juvenile offenders and not to juvenile crime victims. Section 51.14 provides, *inter alia*, that where a particular matter is within the jurisdiction of a juvenile court, the juvenile offender's records shall be confidential. *See also* Code Crim. Proc. art. 58.01 (records of courts that prosecute individuals for specific offenses under the age of 17 must be sealed in the same manner as provided for in the Family Code for juvenile courts). These provisions have no bearing on records relating to juvenile crime victims; they clearly apply only to records concerning juvenile offenders. Although the provisions express concern for the privacy of juvenile offenders, juvenile crime victims have thus far received no similar explicit statutory protection. The absence of such protection, however, is a matter requiring legislative attention.

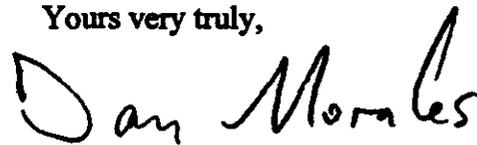
The city has not provided any records to this office for review. We are therefore unable to determine the applicability of any of the exceptions under which the city seeks to withhold the information. If you believe that some of the requested information may be withheld under the exceptions discussed in this opinion, you must submit the records to this office along with your reasons for withholding the information, so that we may make a determination on a case by case basis.

⁵We note that several other statutory confidentiality provisions might apply to this request for information. *See e.g.*, Health & Safety Code § 773.091(b) (emergency medical services records); Health & Safety Code § 611.002 (psychiatric and mental health records); V.T.C.S. art. 4495b, § 5.08(b) (medical records). We are unable to address the applicability of these provisions because there were no documents submitted for our review.

S U M M A R Y

The identities of juvenile victims of serious sexual offenses are protected by common-law privacy as incorporated into section 552.101 of the Government Code. The identities of juvenile victims of other crimes and accidents are not protected by common-law privacy, but may be protected by constitutional privacy in some cases. Identities of juvenile crime victims contained within records of investigations of child abuse conducted pursuant to chapter 34 of the Family Code are deemed confidential by law under section 34.08 of the Family Code and must be withheld from disclosure under section 552.101 of the Open Records Act. Section 51.14 of the Family Code prohibits disclosure of records of juvenile offenders; it does not apply to records concerning juvenile crime victims. Records identifying juvenile crime victims, whether as complainants or as witnesses, may be withheld, however, under section 552.108 of the Government Code, if it is shown that disclosure might subject the victim to possible intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement officers.

Yours very truly,



DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General

DREW T. DURHAM
Deputy Attorney General for Criminal Justice

JAVIER AGUILAR
Special Assistant Attorney General

RENEA HICKS
State Solicitor

SARAH J. SHIRLEY
Chair, Opinion Committee

Prepared by Loretta R. Dehay
Assistant Attorney General