



Office of the Attorney General
State of Texas

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OR92-68

Dear Ladies:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your requests were assigned ID#s 14419 and 14430 respectively.

You have received two requests for information relating to a closed aggravated sexual assault case prosecuted by your office. In her first request, addressed to the City/County Health Department, the requestor seeks "the *complete* contents of any files on Dayle Alan Langston (*State of Texas vs. Dayle Alan Langston*, cause no. 86-400c)," including certain medical records relating to the defendant and victim and any other documents concerning the case kept by the City/County Health Department. In her second request, addressed to the city police department, the requestor seeks twenty-four specific categories of information relating to the closed investigation. You claim that the requested information is excepted from required public disclosure by section 3(a)(1) of the Open Records Act.

We turn first to the request to the health department. You have enclosed for our review a copy of a laboratory report in regard to the defendant. You assert that this material is excepted from required public disclosure by section 3(a)(1) of the Open Records Act, which excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You claim that this material constitutes medical records under the Medical Practice Act, article 4495b, V.T.C.S. Section 5.08(b) of the Medical Practice Act provides:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

You state that the medical tests were performed by the Waco-McLennan County Public Health District in accordance with a physician's standing orders. A previous open records decision issued by this office held similar information to constitute "medical records" as defined by article 4495b. *See* Open Records Decision No. 324 (1982) (blood test results of participants in voluntary lead screening program administered by city personnel under written orders of physician). Therefore, we conclude that the availability of the requested information is governed by the Medical Practice Act.

Access to records created or maintained by a physician within article 4495b is governed by the provisions of that statute, rather than by the Open Records Act. Open Records Decision No. 598 (1991) at 5 (copy enclosed). Subsection (h) of section 5.08 of the Medical Practice Act provides in pertinent part:

Exceptions to the privilege of confidentiality, in other than court or administrative proceedings, allowing disclosure of confidential information by a physician, exist only in the following . . .

(5) any person who bears a written consent of the patient or other person authorized to act on the patient's behalf for the release of confidential information, as provided by Subsection (j) of this section.

Subsection (j) provides that written consent must include:

- (A) the information or medical records to be covered by the release;
- (B) the reasons or purposes for the release; and
- (C) the person to whom the information is to be released.

Although the requestor claims to be "standing proxy" for the defendant, she has not submitted proof of written consent or demonstrated that she is otherwise authorized to act on his behalf as provided in section 5.08(h)(5) and (j). Accordingly, we conclude that the requested information is confidential under other law and must be withheld from required public disclosure under section 3(a)(1) of the Open Records Act.

As regards the second request, you advise us that some of the requested information is not in the possession of the City of Waco. The Open Records Act applies only to information in existence and does not require a governmental body to prepare new information. Open Records Decision No. 572 (1990). Accordingly, you need not comply with that part of the request for which you have no records. Although you do not object to release of some of the remainder of the requested information, you claim that information included in the witness statements, certain police investigative reports, physical evidence submission forms, and a chart that includes information relating to other investigations is excepted from required public disclosure under the doctrine of common-law privacy as it is incorporated into section 3(a)(1) of the Open Records Act. You have submitted these documents to us for review.

You contend that the information is excepted under section 3(a)(1) because it would reveal private information about the victim and other witnesses, all of whom are minors. In *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), the Texas Supreme Court ruled that the doctrine of common-law privacy excepts "information contain[ing] highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person," provided "the information is not of legitimate concern to the public." The fact that a person has been the victim of a rape or attempted rape reveals "highly intimate or embarrassing facts" about the victim, and disclosure of this fact would be "highly objectionable to a person of

ordinary sensibilities." Open Records Decision No. 393 (1983). Although there is a strong public interest in knowing that a crime has been committed, such an interest does not generally require the disclosure of the names of victims. Open Records Decision No. 339 (1982); *see also* Attorney General Opinion JM-81 (1983). Furthermore, certain other information, such as the location of the crime, which might furnish a basis for identification of the victim is also excepted from required public disclosure under section 3(a)(1), as is a detailed description of an incident of aggravated sexual abuse. Open Records Decision No. 339.¹

We have examined the documents submitted to us for review. We assume that the names of the victims and information that might identify them have not been previously made part of the public record.² The witness statements may be withheld from required public disclosure in their entirety under the doctrine of common-law privacy. The investigative reports and the physical evidence submissions, however, contain some information not excepted by section 3(a)(1). For your convenience, we have marked the information that may be withheld from required public disclosure under the doctrine of common-law privacy. The remainder of the information must be released.

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 refer to OR92-68.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

¹You assert that some of the requested information is excepted from required public disclosure by "false light" privacy interests. "False light" privacy, however, is not a basis for excepting information from disclosure under section 3(a)(1). Open Records Decision No. 579 (1990) at 6-7 (overruling Open Records Decision Nos. 562 (1990); 525 (1989); 409 (1984); 372 (1983)).

²If this information were previously part of the public record, it might be subject to further public disclosure. *See Industrial Foundation*, 540 S.W.2d at 684.

MRC/GK/lcd

Ref.: ID# 14419

ID# 14430

Enclosures: Open Records Decision No. 598
Marked Documents

cc: Ms. Sandra L. Malufka
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