



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 5, 1993

Mr. Tom O'Connell
Criminal District Attorney
Collin County Courthouse, Suite 324
McKinney, Texas 75069

OR93-085

Dear Mr. O'Connell:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article chapter 552 of the Government Code. Your request was assigned ID# 17752.

The Collin County Criminal District Attorney (the "criminal district attorney") has received a request for information relating to the prosecution of a case for causing injury to a child. Specifically, the requestor, who represents the parents of the child at issue in the case in a separate civil suit, seeks:

copies of any and all documents, including statements of witnesses, investigative reports, interoffice memoranda, file notes, correspondence, pleadings and motions filed, orders and judgments entered in cause #296-80749-90, styled The State of Texas v. Rhonda Joyce Dolan, regarding the prosecution of Rhonda Dolan in connection with injuries to a child.

You have submitted the requested information to us for review. It includes numerous medical records of the child, various court records, police investigation materials, witness statements, National Crime Information Center ("NCIC") information, and various other documents. You ask whether any of the requested information is made confidential by law.

Section 3(a)(1) of the Open Records Act excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Information may be withheld from required public disclosure under common-

statements, National Crime Information Center ("NCIC") information, and various other documents. You ask whether any of the requested information is made confidential by law.

Section 552.101 (former section 3(a)(1)) of the Open Records Act excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Information may be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 552.101 of the act by the Texas Supreme Court in *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing *and* is of no legitimate concern to the public. In contrast, the constitutional right of privacy protects information relating to marriage, procreation, contraception, family relationships, and child rearing and education. *See* Open Records Decision No. 447 (1986) at 4. Having examined the information submitted to us for review, we conclude that much of the requested information implicates the common-law or constitutional privacy interests of the child.²

However, the special right of access to information afforded by section 552.023 (former section 3B) of the Open Records Act, in conjunction with the duties and rights of parents as set forth in chapter 12 of the Family Code, permits the release of information about their child otherwise protected by a common-law or constitutional right of privacy. Section 552.023(a) of the Open Records Act states, in pertinent part:

A person or a person's authorized representative has a special right of access, beyond the right of the general public, to records and copies of records held by a governmental body that contain information relating to the person that is protected from public disclosure by laws intended to protect that person's privacy interests.

Section 12.04 of the Family Code establishes the rights, privileges, duties, and powers of a parent. Subsection (2) of that section affords the parent "the duty of care, control,

²Much of the information that implicates the privacy interests of the child is contained on medical records generated by or under the supervision of a physician. While medical records are under the control of a physician, section 5.08(k) of article 4495b, the Medical Practice Act, controls over the right of access granted in section 552.023 of the Open Records Act; however, once released to a governmental body, and no longer under the supervision or control of a physician, medical records are subject to an ordinary analysis under the Open Records Act. *See* Open Records Decision No. 565 (1990) at 6-8. Because the medical records at issue here are no longer under the supervision or control of a physician, but are rather in your custody, the confidentiality provisions of the Medical Practice Act are no longer controlling. Accordingly, we need only consider whether release of the medical records would implicate the common-law or constitutional privacy interests of the patient.

protection, and reasonable discipline of the child." Subsection (7) grants the parent "the power to represent the child in legal action and to make other decisions of substantial legal significance concerning the child." Clearly, the parents are properly exercising their rights and duties as parents in requesting through their attorney information which pertains to their child and have under section 552.023 of the Open Records Act a special right of access on behalf of their child to information concerning their child which would otherwise be protected from required public disclosure in deference to the child's privacy interests. *See generally* Open Records Decision No. 542 (1990).³

The requested information also includes criminal history record information ("CHRI") generated by the NCIC. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). However, the federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* In *Houston Chronicle Pub. Co. v. City of Houston*, 531 S.W.2d 177, 185 (Tex. Civ. App. -- Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the court held that a person's arrest record and criminal history were excepted from public disclosure by section 552.108 (former section 3(a)(8)) of the Open Records Act. *See also* Open Records Decision Nos. 354 (1982); 252 (1980); 216, 183 (1978). Other decisions of this office, however, have suggested that criminal history information may implicate privacy interests. *See* Open Records Decision Nos. 616 (1993); 565; 216. *See also* *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (criminal history information protected from disclosure under the federal Freedom of Information Act by privacy interest); *Houston Chronicle*, 531 S.W.2d at 188. We therefore advise your office to withhold the CHRI.

We are not aware of any law that otherwise prohibits release of the requested information. Accordingly, the requested information, except for the CHRI as noted above, must be released in its entirety.

Because case law and prior published open records decisions resolve your request,

³Some of the requested information also implicates the common-law and constitutional privacy interests of both parents. A governmental body is not authorized under the Open Records Act to release records, otherwise private, to a person that relate to his or her spouse; such records *are* protected by a right to privacy. Open Records Decision No. 481 (1987). Assuming that the attorney requesting the information represents the parents jointly *and* severably, each of the parents has a special right of access under section 552.023 to information about him- or herself which would otherwise be protected by his or her privacy interests. Absent specific authorization from either of the parents or his or her representative, however, neither parent has a special right of access under section 552.023 to information about his or her spouse. At any rate, you may release the requested information to the attorney representing the parents.

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 OR93-085.

Yours very truly,


Rebecca L. Payne
Chief, Open Government Section

RLP/GCK/rho

Ref.: ID# 17752

cc: Mr. Kenneth W. Biermacher
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(w/o enclosures)