



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 28, 1993

Mr. Gary W. Smith
City Attorney
City of Galveston
P.O. Box 779
Galveston, Texas 77553-0779

OR93-105

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 18394.

The City of Galveston (the "city") has received a request for information relating to an arrest for which the requestor was prosecuted and sentenced to life in prison. Specifically, the requestor seeks copies of the complaint and information, probable cause affidavit, arrest warrant, and police report. You advise us that the city is not in possession of the first three items. The Open Records Act does not obligate a governmental body to make available information not in its possession. Open Records Decision No. 558 (1990). You have submitted to us for review, however, the requested police report. You claim that former sections 3(a)(1) and 3(a)(8) of the Open Records Act (now found at sections 552.101 and 552.108, respectively, of the Government Code)

¹The Seventy-Third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46, at 988. 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.

except certain portions of this report from required public disclosure. You advise us that the city will make available to the requestor the remaining portions of the report.²

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The doctrine of common-law privacy protects information containing highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, provided the information is not of legitimate public concern. *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). In Open Records Decision No. 393 (1983), this office determined that information that identifies or would tend to identify a victim of a serious sexual offense may be withheld under common-law privacy. In Open Records Decision No. 339 (1982), this office held that a detailed description of an incident of aggravated sexual abuse may be withheld if it might furnish the basis for identification of the victim.

We have examined the documents submitted to us for review. We conclude that some of the requested information meets the test for common-law privacy set forth in *Industrial Foundation* and applied in Open Records Decision Nos. 339 and 393. Moreover, we conclude that this information is inextricably intertwined with the remaining information. Accordingly, except for first page offense report information specifically held to be public in *Houston Chronicle Publishing 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), section 552.101 requires the city to withhold the report in its entirety.

You also seek to withhold a compilation of the requestor's criminal history. Although criminal history record information ("CHRI") obtained through the NCIC III network is confidential and may be released only in accordance with federal regulations, *see* Open Records Decision No. 565 (1990), CHRI obtained from the TCIC network may be withheld from the individual to whom it pertains only upon a demonstration to this office that a legitimate law enforcement interest exists in withholding the information pursuant to section 552.108. *Id.* Because you have not demonstrated a law enforcement interest in withholding this information, the city must release the CHRI to the requestor if, as it appears to this office, the information was obtained through TCIC.

²Because the city intends to release the remaining portions of the police report to the requestor, we assume that the police investigation of the sexual assault was conducted pursuant to chapter 21 of the Penal Code, and not chapter 34 of the Family Code. Generally, records of a law enforcement agency's investigation of sexual abuse of a child that is conducted pursuant to chapter 34 of the Family Code are confidential in their entirety and thus may not be released to the public. *See* Fam. Code § 34.08; *see also* Open Records Decision No. 440 (1986).

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 contact this office.

Yours very truly,



Rebecca L. Payne
Section Chief
Open Government Section

RLP/GCK/rho

Ref.: ID# 18394
ID# 18475

Enclosures: Submitted documents

cc: Mr. John W. Bates
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(w/o enclosures)