



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 30, 1994

Ms. Annette Jones
Police Legal Advisor
City of Waco
Legal Services
P.O. Box 2570
Waco, Texas 76702-2570

OR94-622

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 27958.

The City of Waco (the "city") has received a request for the narrative police reports in a certain sexual assault case. Specifically, the requestor seeks the police reports involving Mr. Charles R. Jones, who was arrested for burglary on May 23, 1987. You advise us that the city has made some of the requested information available to the requestor. You seek to withhold the remaining information, however, and claim that section 552.101 of the Government Code exempts it from required public disclosure.

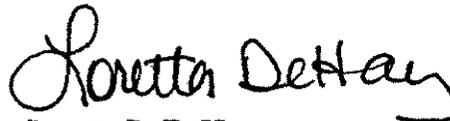
Section 552.101 exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." At the outset, we note that the submitted information includes records governed by the Medical Practice Act, V.T.C.S. article 4495b. Section 5.08(b) of the Medical Practice Act provides that "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician" are confidential. Records must be kept confidential under article 4495b only if they are actually prepared or maintained by a physician. Attorney General Opinion JM-229 (1979) at 2; Open Records Decision No. 343 (1982) at 1. Some of the records submitted to us for review were prepared by a physician. These records have been marked and must be withheld from required public disclosure under section 552.101 of the Government Code.

You assert section 552.101 in conjunction with common-law privacy. Information may be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 552.101 by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 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 Open Records Decision No. 393 (1983), this office concluded that common-law privacy protects information that identifies or would tend to identify a victim of a serious sexual offense. *See also* Open Records Decision No. 339 (1982).¹

We have examined the information that you seek to withhold from public disclosure. We agree that some of it would identify or tend to identify the victim of a serious sexual offense. We have marked the submitted documents to indicate the information that you must withhold from required public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. The remainder of the requested information, except as noted above, must be made available to the requestor.

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,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

Enclosures: Marked documents

Ref.: ID# 27958

cc: Ms. Doris Harvey
303 Hood Street
Waco, Texas 76704
(w/o enclosures)

¹*But see Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (court cannot prevent a newspaper from publishing the identity of a victim of sexual assault when lawfully obtained from the public record). Thus, to the extent that such information is included in public court records, the city may not now withhold it from public disclosure on the basis of common-law privacy.