



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 13, 1996

Mr. Alberto J. Pena
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR96-0332

Dear Mr. Pena:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38482.

The San Antonio Police Department (the "department") received a request for the "public page" of all [department] Offense Reports." You state that the department has been providing the public page of the offense reports to the requestor with the exception of sexual assault or other sex-related offense reports which you contend are excepted from required public disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right of privacy and chapter 34 of the Family Code.¹

With regard to its claim that section 552.101² and the common-law right of privacy excepts from required public disclosure the entire offense reports related to sexual assault or other sex-related offenses, the department misinterprets Open Records Decision Nos. 339 (1982), 393 (1983), and 440 (1986). Although those opinions conclude that some information in an offense report must be withheld under common-law privacy, each of those opinions was based on the specific facts and circumstances at issue in each request. In Open Records Decision No. 339 (1982), this office concluded that the City of

¹You have submitted for our review a representative sample of the information you seek to withhold. In reaching our conclusion here, we assume that this "representative sample" is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize, the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Plano could withhold in an active case certain information that might furnish a basis for identification of the sexual assault victim. As a result, only very minimal information was released. In Open Records Decision No. 393 (1983), we concluded that "information which either identifies or would tend to identify the victim may be withheld under the common law right of privacy." We further concluded that because the identifying information was inextricably intertwined with other releasable information, the governmental body was able to withhold the entire report. Finally, in Open Records Decision No. 440 (1986), apparently under circumstances similar to those at issue in Open Records Decision No. 393 (1983), this office restated that "a police report regarding sexual abuse of a child is excepted from public disclosure under the common law right of privacy." The theme running through each of these opinions, and more recently stated in Open Records Decision No. 628 (1994), is that only *identifying* information of victims of serious sexual offenses can be withheld on the basis of common-law privacy.

Information is excepted from required public disclosure by a common-law right of privacy under section 552.101 if the information (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 339 (1982), this office stated:

In our opinion, common law privacy permits the withholding of the *name* of every victim of a serious sexual offense. See Open Records Decision No. 205 (1978). The mere fact that a person has been the object of rape does, we believe, reveal "highly intimate or embarrassing facts" about the victim and, in our view, disclosure of this fact would be "highly objectionable to a person of ordinary sensibilities." Although there is certainly a strong public interest in knowing that a crime has been committed, we do not believe that such interest requires the disclosure of the *names* of victims. Furthermore, certain other information, such as the location of the crime, might furnish a basis for identification of the victim.

Open Records Decision No. 339 (1982) at 2-3 (emphasis added). In accordance with previous decisions of this office, we conclude that **only that information which either identifies or tends to identify an adult victim of sexual assault or other sex-related offense contained in the public page of the department's Offense Reports must be withheld under the common-law right of privacy and section 552.101 of the Government Code.** For example, in regard to the representative sample submitted to this office, because the sample offense report deals with a victim identified only by a pseudonym, the only information which tends to identify the victim is the location of the offense. The remainder of the report must be released to the requestor.

You also claim that section 34.08 of the Family Code, as applied through section 552.101, excepts the requested information from disclosure. Title 2 of the Family Code, which includes section 34.08, was repealed in the most recent legislative session. Section 261.201(a) of the new title 2, effective April 20, 1995, is substantively the same as section 34.08(a) of the previous title 2. Act of April 20, 1995, 74th Leg., R.S., ch. 20, § 1, 1995 Tex. Sess. Law Serv. 113, 262, 282 (Vernon). Section 261.201(a) of the Family Code provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We conclude that the public page of the department's Offense Reports related to an incident of child abuse or neglect are records developed in an investigation under chapter 261 of the Family Code, are confidential, and must be withheld in their entirety under section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Todd Reese". The signature is written in a cursive style with a long horizontal line extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/ch

Ref.: ID# 38482

Enclosures: Submitted documents

cc: Mr. Ed Rademaekers
World Wide Web Site Development and Management
301 Huisache
San Antonio, Texas 78212
(w/o enclosures)