



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 9, 1996

Mr. A. Don Crowder
City Attorney
City of Allen
P.O. Box 26
Allen, Texas 75013-0026

OR96-1089

Dear Mr. Crowder :

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 40465.

The City of Allen (the "city") received a request for "whatever information you have on the child molester that lives on Malone." You assert that the offender's name, employer, and the name and address of the offender's nearest relative are excepted from required public disclosure based on sections 552.101, 552.108, and 552.305(a) of the Government Code.

The Seventy-fourth Legislature amended V.T.C.S. article 6252-13c.1, the statute that pertains to the disclosure of sexual offender registration information. The changes in the law resulting from these amendments do not apply to information that pertains to a reportable conviction or adjudication that occurred before the effective date of the amendments, which date is September 1, 1995. A reportable conviction or adjudication that occurred before September 1, 1995, or an order of deferred adjudication that is entered before that date is covered by the law in effect when the conviction or adjudication occurred or the order was entered.¹

¹See Acts 1995, 74th Leg., R.S., ch. 258, § 16 1995 Tex. Sess. Law Serv. (Vernon) 2197, 2205.

You submitted a copy of the Texas Department of Public Safety Sex Offender Registration form that pertains to the requested information. That form states that the offender was convicted/adjudicated on April 3, 1996. Therefore, the new law applies to the requested information.

Under that new law, all information contained in either an adult's or juvenile's sex offender registration form and subsequently entered into the Department of Public Safety data base is deemed to be public information pursuant to section 5(b) of V.T.C.S. article 6252-13c.1, with the exception of certain information made confidential under section 5(b): the registrant's photograph, social security number, driver's license number, numeric street address, telephone number and any information that on its face would directly reveal the identity of the victim. *See* Open Records Decision No. 645 (1996). Therefore, the statute requires the city to release to the requestor all of the information on the Department of Public Safety form, with the exception of the registrant's social security number, driver's license number, numeric street address, telephone number, and any information that on its face would directly reveal the victim's identity.

We do not believe the form contains any information that would directly reveal the victim's identity. You urge that the release of the offender's name would allow an individual to trace the identity of the victim. The fact that an individual could use the offender's name to trace the victim's identity does not make the offender's name confidential. *See id.* at 4. Statutory confidentiality requires express language making particular information confidential. *See id.*

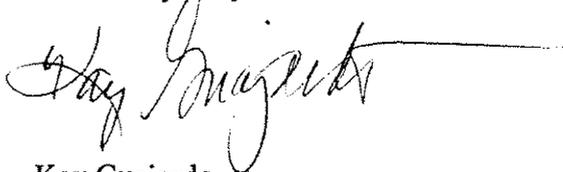
Your section 552.108 claim is also grounded in your assertion that the release of the offender's name would allow an individual to trace the victim's identity. Section 552.108 excepts from required public disclosure law enforcement records. Generally, the identity of the victim may not be withheld from disclosure under section 552.108. The identity of a victim of a serious sexual offense in law enforcement records may be withheld under section 552.101, but only if it is protected by common-law privacy.

You assert that the offender's name, employer, and the name and address of the offender's nearest relative are protected from required public disclosure based on the common-law right to privacy. Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if (1) the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and (2) if the information is of no legitimate concern to the public. *See id.*

We believe the public has a legitimate interest in the information at issue, and therefore, do not address the first prong of the *Industrial Foundation* test. The passage of this legislation and of its federal counterpart, "Megan's Law", Pub. L. No. 104-145, 110 Stat. 1345 (1996) (to be codified at 42 U.S.C. § 1407(d)) provides clear evidence of that interest. We therefore conclude that the information is not protected from public disclosure by a common-law right to privacy.

We are resolving this matter with this 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 may 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, appearing to read "Kay Guajardo", with a long horizontal line extending to the right.

Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 40465

Enclosures: Submitted documents

cc: Ms. Christina Woodall
1545 Edelweiss
Allen, Texas 75002
(w/o enclosures)