



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 19, 1997

Ms. Elaine S. Hengen  
Assistant City Attorney  
City of El Paso  
Office of the City Attorney  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR97-0573

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 104624.

The City of El Paso (the "city") received a request for certain police reports for a particular address from 1991 to the date of the request. You state that the city will release some of the requested information to the requestor. However, you claim that the remainder of the requested information is excepted from disclosure under sections 51.14 and 261.201 of the Family Code and common-law and constitutional privacy, as applied through section 552.101 of the Government Code. You have submitted samples of the requested information.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office 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.

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 made under this chapter and the identity of the person making the report;

(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.

The other provisions of section 261.201 do not appear to apply here. We are not aware of any rules promulgated by the city which permit the dissemination of this type of information. Accordingly, we agree that the information submitted as Exhibit "B" and one of the documents submitted as Exhibit "G" are made confidential by section 261.201 of the Family Code and must be withheld from disclosure under section 552.101 of the Government Code. See Open Records Decision No. 440 (1986) (applying former Fam. Code § 34.08). We have marked the information in Exhibit "G" that must be withheld under section 261.201.

Section 51.14(d) of the Family Code was repealed by the Seventy-fourth Legislature. Act of May 27, 1995, 74th Leg., R.S., 1995 Tex. Gen. Laws 2517, 2590. The Seventy-fourth Legislature replaced the provisions concerning juvenile criminal records with section 58.007 of the Family Code. However, conduct that occurred prior to January 1, 1996, is governed by the law in effect at the time the conduct occurred, and that law is continued in effect for that purpose. *Id.* As the conduct in the reports submitted as Exhibits "C," "G," and "H" occurred before January 1, 1996, we must determine if section 51.14(d) of the Family Code excepts that information from required public disclosure.

Section 51.14(d) provides, in pertinent part:

Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records [concerning a child] are not open to public inspection nor may their contents be disclosed to the public . . . .

It appears that these reports do not involve charges for which the juveniles were transferred under section 54.02 of the Family Code. It is not apparent that any of the provisions allowing inspection of the records apply to the requestor. Additionally, none of the exceptions to section 51.14(d) apply here. We conclude that the department must withhold the information

submitted as Exhibit "C" and some of the information submitted as Exhibit "G" under section 51.14(d) of the Family Code. We have marked the information in Exhibit "G" that must be withheld under section 51.14(d). The reports submitted as Exhibit "H" do not identify juveniles but involve only adult offenders. Therefore, the city may not withhold the information in Exhibit "H" under section 51.14(d).

The reports in Exhibit "D" contain information regarding conduct by juveniles after January 1, 1996. As you correctly state, section 58.007 of the Family Code does not make this information confidential. Open Records Decision No. 644 (1996). You claim that the information is protected from required public disclosure by constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently, and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Having reviewed the information in Exhibit "D," we cannot conclude that the information is protected from disclosure by constitutional privacy. See *Scheetz v. The Morning Call, Inc.*, 946 F.2d 202 (3d Cir. 1991), *cert. denied*, 502 U.S. 1095 (1992) (information contained in police report not protected by confidentiality branch of the constitutional right of privacy). Therefore, the city may not withhold the information in Exhibit "D." The city may also not withhold the information in Exhibit "G" not otherwise addressed in this ruling under a constitutional right of privacy.

You claim that the information submitted in Exhibit "E" and some of the information in Exhibit "G" is protected from disclosure by common-law privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information 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.

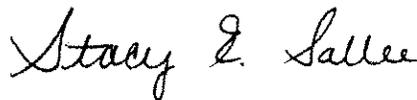
540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing statutory predecessor to Gov't Code § 552.101). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate

children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. We have marked the information in Exhibit "E" that must be withheld under common-law privacy. The remainder of the information in Exhibits "E" and "G" may not be withheld under common-law privacy.

Similarly, we believe that any information that reveals the identity of the victim in the sexual assault reports submitted as Exhibit "F" must be withheld under common-law privacy. See Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982) (identities of victims of sexual abuse or detailed description of sexual abuse protected by common-law privacy). The remainder of the information in the reports in Exhibit "F" may not be withheld.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

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Ref.: ID# 104624

Enclosures: Submitted documents

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(w/o enclosures)