



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 3, 1997

Mr. John Steiner
Division Chief
Law Department
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR97-0707

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 105290.

The Austin Police Department (the "department"), which you represent, received a request for the "complete case file" regarding four specific offense reports. You claim that the requested information is excepted from disclosure by sections 552.101 and 552.108 of the Government Code.

Pursuant to section 552.301(b), a governmental body is required to submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office copies or representative samples of the specific information that was requested.

Pursuant to section 552.303(c) of the Government Code, this office notified you by facsimile dated February 21, 1997, that you had failed to submit the information required by section 552.301(b). We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e) failure to comply would result in the legal presumption that the information at issue was presumed public. The fact that submitting copies for review to the Attorney General may be burdensome does not relieve a governmental body of the responsibility of doing so. Open Records Decision No. 497 (1988).

In this instance, you submitted to this office the required information on March 5, 1997, a date more than seven days from the date of receiving the notice. See Gov't Code 552.308(1). Therefore, as provided by section 552.303(e), the information that is the subject of this request for information is presumed to be public information. Information that is presumed public must be released unless a governmental body demonstrates a compelling interest to withhold the information to overcome this presumption. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). See, e.g., Open Records Decision Nos. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure), 150 (1977) (presumption of openness overcome by showing that the information is made confidential by another source of law or affects third-party interests). In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, the requested information is presumed public. Open Records Decision No. 195 (1978).

We note, however, that compelling reasons exist as to why some of the requested information should not be made public and, therefore, must not be released by the department. 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. Information may be withheld under section 552.101 in conjunction with common-law privacy if (1) the information is highly intimate or embarrassing, and (2) it is of no legitimate concern to the public. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing 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. In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common-law privacy interest which prevents disclosure of information that would identify her/him. We, therefore, conclude that the department must not release information which would identify, or tend to identify, a victim of sexual assault.

Section 552.101 also encompasses information made confidential by other law. Where the victim of a sexual assault or other sex-related offense is a child, section 261.201(a) of the Family Code may be applicable. Section 261.201(a) 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 section 261.201(a) is applicable to some of the records at issue. As you have not advised this office of any rules promulgated by the department which would permit the release of this information, we conclude that the records relating to the sexual abuse of a child are confidential by law and must be withheld from disclosure in their entirety.

Additionally, we believe that other statutory laws are applicable to some of the requested information. *See, e.g.*, Health & Safety Code (pertaining to disclosure of health care information by a hospital or an agent or employee of a hospital); and V.T.C.S. art. 4495b, § 5.08(b) (pertaining to disclosure of medical records created or maintained by a physician). The city must not release this type of information except as authorized by the applicable statutes.

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,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/gle

Ref.: ID# 105290

w/o enclosures

cc: Ms. Suzanne McQuillen
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(w/o enclosures)