



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 13, 1998

Mr. Saul Pedregon
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
City Hall
Dallas, Texas 75201

OR98-1927

Dear Mr. Pedregon:

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# 117352.

The Dallas Police Department (the "department") received a request from Charles J. Quaid, acting in his capacity as attorney representing Mr. Duncan Burch. This request was for: 1) all documents related to any intelligence file or report involving Duncan Burch; 2) all videotapes, photographs, audiotapes or otherwise contained in any intelligence file or maintained on Duncan Burch; 3) a copy of any and all documents related to any criminal arrests, investigations or surveillance of Duncan Burch; 4) all documents related to any undercover criminal investigation of Duncan Burch; 5) a copy of all written complaints about Duncan Burch from any source; and 6) any internal memorandum from the City of Dallas, Dallas City Counsel or Dallas Police Department related to or referencing Duncan Burch.

You contend that the documents responsive to this request are excepted from disclosure under sections 552.101, 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the documents you submitted.

You submitted intelligence reports 6-6586 and 6-6586-A, as well as offense report 0900097-E, contending this information is excepted from disclosure under section 552.101 of the Government Code, in conjunction with section 261.201 of the Family Code. Information is excepted from the disclosure requirement by section 552.101 "if it is information considered to be confidential by law, either constitutional, statutory, or by

judicial decision.” Section 261.201 of the Family Code is a statute establishing certain information as confidential; it reads in pertinent part:

(a) 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 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, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We are of the opinion that intelligence reports 6-6586 and 6-6586-A, as well as offense report 0900097-E, are reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code and are therefore confidential by statute. As you have not cited any specific rule that the department has adopted with regard to the release of this type of information, these records are presumed confidential in their entirety. *See* Open Records Decision No. 440 (1986) at 2. Accordingly, the department must not release this requested information.

You have submitted intelligence report 6-6502, which you contend is excepted pursuant to section 552.108 of the Government Code. Government Code section 552.108 (a)(2) excepts information “that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication” Intelligence report 6-6502 is a report of an investigation into a death which was ruled a suicide; it makes no references to violations of law. You represent that this report did not result in conviction or deferred adjudication. Based on your representation, we find that this information may be withheld, pursuant to section 552.108(a)(2) of the Government Code.

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov’t Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d 177; Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report.

Although section 552.108 authorizes you to withhold the remaining information from this report, you may choose to release all or part of the information at issue that is not

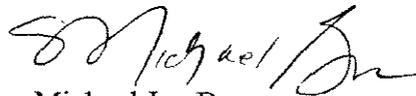
otherwise confidential by law. *See Gov't Code § 552.007.*

You have submitted copies of newspaper clippings titled "Topless-bar owner gets probation in molestation case." The text of your request does not identify these documents as subject to any exception from the disclosure requirements of Government Code section 552.021, no such grounds are apparent on the face of the items, and the items are not marked to indicate any contended exceptions. If an agency does not establish how and why an exception applies to requested information, there is no basis on which to pronounce it protected. *Open Records Decision 363 (1983).* This information must therefore be released.

Because we are able to make determinations regarding each of the submitted records on the grounds discussed above, we do not address the arguments you present under Government Code section 552.101 on common law privacy grounds or on judicial decision grounds or under Government Code 552.103.

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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 117352

Enclosures: Submitted documents

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(w/o enclosures)