



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 4, 1998

Captain Robert Taylor
Amarillo Police Department
200 S E 3rd
Amarillo Texas 79101-1515

OR98-2599

Dear Captain Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119374.

The Amarillo Police Department (the "department") received a request for all child or family offenses involved with four named individuals. You claim that the responsive information, incident report numbers 75-13396 and 84-20645 is excepted from disclosure by sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

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 that

(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.

Report number 84-20645 here appears to consist of "files, reports, records, communications, audiotapes, videotapes, and working papers used or developed" in an investigation conducted under chapter 261 of the Family Code. Fam. Code §§ 261.001(1)(a)(C), 261.103(1). We believe subsection (a) is applicable to this report. *See* Fam. Code § 261.201 (formerly Fam. Code § 34.08 (effective September 1, 1975)). Thus, the department must withhold report number 84-20645 under section 552.101. Report number 75-13396, however, appears to have been created prior to the effective date of the Family Code's confidentiality provision. *See* Act of June 2, 1975, 64th Leg., R.S. ch. 476 §§ 54, 58, 1975 Tex. Gen. Laws 1253, 1272-1273 (effective September 1, 1975); *cf.* Open Records Decision Nos. 176 (1977), 49 (1974) (child abuse investigation records). Consequently, we will examine your additional arguments against disclosure.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is 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; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

* * *

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the exception applies. *See* Gov't Code § .301(b)(1); Open Records Decision No. 216 (1978); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this case,

you make no argument as to how or why the exception applies. You have not shown the applicability of section 552.108.

You also argue that report number 75-13396 may be withheld under a right of privacy. Section 552.101 also encompasses common-law privacy and excepts from disclosure private facts about an individual. *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 from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). We have previously found that the identities of juvenile victims of serious sexual offenses are protected by common-law privacy as incorporated into section 552.101 of the Government Code. Open Records Decision No. 628 (1994). The identities of juvenile victims of other crimes and accidents, however, are not protected by common-law privacy. *Id.* at 3-4. We have examined the submitted report and do not believe that it is protected from disclosure by a right of privacy in this case. Report number 75-13396 must be released.

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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/nc

Ref: ID# 119374

Enclosures: Submitted documents

cc: Ms. Mary White
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(w/o enclosures)