



March 1, 1999

Mr. Jay Garrett
City Attorney
City of Greenville
P.O. Box 1049
Greenville, Texas 75403-1049

OR99-0600

Dear Mr. Garrett:

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# 122482.

The Greenville Police Department (the “department”) received an open records request for records pertaining to a sexual assault that allegedly occurred at a nursing facility. You contend the requested information is excepted from required public disclosure pursuant to sections 552.101, 552.103, and 552.108 of the Government Code.

We note at the outset that the department has transferred copies of at least some of the records at issue to the Texas Department of Human Services to assist that agency in its investigation of the alleged assault. Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 at 1 (1982), we will raise specific statutes making information confidential because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Gov’t Code § 552.352. Subchapter E of chapter 242 of the Health and Safety Code provides for procedures governing investigations conducted by the Department of Human Services or a “designated agency”¹ into reports of abuse and neglect in institutions such as nursing homes. Section 242.127 provides:

¹Section 242.121 of the Health and Safety Code defines “designated agency” as “an agency designated by a court to be responsible for the protection of a resident who is the subject of a report of abuse or neglect.”

A report, record, or working paper used or developed in an investigation made under this subchapter and the name of any person making a report under this subchapter are confidential and may be disclosed only for purposes consistent with the rules adopted by [Texas Board of Human Services] or the designated agency.

Although it is not clear as to the extent to which the records you submitted to this office were transferred to the Department of Human Services, we conclude that if any such records were “used” in an investigation under subchapter E, they must be withheld from the public in their entirety pursuant to section 242.127.

We now address the applicability of the other exceptions you raised to any remaining documents not transferred to the Department of Human Services. Because you contend that section 552.103 excepts all of the requested information from public disclosure, we will address the applicability of this exception first. To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 at 1 (1991). You contend that section 552.103 applies to the requested information because the department is presently considering referring this case for prosecution. Please note, however, that because the department would not be a party to any criminal litigation that would result from its criminal investigation, section 552.103 is not applicable in this instance. The department therefore may not withhold any of the information at issue under this exception.

You contend that some of the records at issue must be withheld from the public pursuant to section 552.101 of the Government Code in conjunction with the Texas Medical Practice Act, V.T.C.S. article 4495b. Section 5.08(b) of article 4495b provides:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

Some of the records at issue constitute medical records made confidential under section 5.08(b). These records may be released only in accordance with other provisions of article 4495b that do not appear to be applicable here. We have marked the documents that you must withhold pursuant to article 4495b.

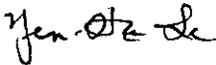
You next contend that section 552.108 protects certain portions of the department’s records. Section 552.108(a)(1) of the Government Code excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection,

investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Because you have indicated that the information at issue pertains to a pending criminal investigation, we conclude that you have met your burden of establishing that the release of the information you have marked in red, green, and purple could interfere with law enforcement. The department therefore may withhold most of the information you have marked at this time pursuant to section 552.108(a)(1).

Section 552.108 does not, however, except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). The department must release these types of information from the offense report in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), including the name of the individual identified as the “reporting party.”² Further, because you have not raised an applicable exception regarding the remaining requested information, the department must release all remaining information not made confidential by law to the requestor.

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.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/RWP/nc

Ref.: ID# 122482

Enclosures: Submitted documents

²This item of information is termed the “complainant” in *Houston Chronicle*.

cc: Ms. Suzanne Ekvall
One Galleria Tower
13355 Noel Road, Suite 500
Dallas, Texas 75240
(w/o enclosures)