



March 4, 1999

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

OR99-0623

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# 122481.

The Greenville Police Department (the "department") received an open records request for its records pertaining to a suspected sexual assault. You contend the requested information is excepted from required public disclosure pursuant to section 552.101 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. In *Industrial Foundation*, the Texas Supreme Court held that information that relates to, among other things, sexual assault is intimate and embarrassing that is generally of no legitimate public interest. *Id.* at 683; *see also* Open Records Decision Nos. 393 (1983), 339 (1982).

Clearly, information pertaining to an incident of sexual assault raises an issue of common-law privacy. Open Records Decision No. 339 (1982). In Open Records Decision No. 339 (1982), this office concluded that "a detailed description of an incident of aggravated sexual abuse raises an issue of common law privacy" and therefore any information tending to identify the assault victim should be withheld pursuant to common-law privacy. *See also* Open Records Decision No. 393 (1983). We have marked the information that the department must withhold from the general public to protect the identity of the suspected victim. The remaining portions of the offense report must be released. *See Star Telegram, Inc. v. Doe*, 915 S.W.2d 471, 474-475 (Tex. 1995).

As noted above, section 552.101 of the Government Code also protects information made confidential by statutory law. The Texas Medical Practice Act, V.T.C.S. 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.

V.T.C.S. art. 4495b, § 5.08(b). 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. The department must release the remaining information at issue.

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,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/RWP/ch

Ref.: ID# 122481

Enclosures: Marked documents

cc: Ms. Suzanne Ekvall  
One Galleria Tower  
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(w/o enclosures)