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CITY OF AMARILLO

LEGAL DEPARTMENT

July 1, 1992

RECEIVED
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Opinion Committee

The Honorable Dan Morales
Attorney General
State of Texas
P. O. Box 12548
Austin TX 78711-2548

Re: Request for Open Records Decision under Sec. 7, Texas Open Records Act

Dear General Morales:

My office has received a demand under the Open Records Act for the blanket release of the names of all juveniles who are victims of crimes or accidents investigated by the Amarillo Police Department. A copy of everything that was sent to me is enclosed herewith.

The initial problem is that I am not the custodian of the Police Department records, but I suspect that is a minor technicality.

I understand from having read hundreds of Open Records opinions from your office that the general rule concerning blanket or standing requests is that they are not proper requests and need not be honored. The problem with general rules is that there are always exceptions to them. Blanket or standing requests also make it impossible to comply with your requirement that the records be sent for examination by your office.

The exceptions to the general rule caution me to assert that police records relating to juveniles are exempted from disclosure by Sections 3(a)(1), 3(a)(3) and 3(a)(8) of the Open Records Act.

Section 3(a)(1) applies for two reasons. One is that police department records relating to juvenile victims of crime are exempted from disclosure by the common law right of privacy which precludes release of records of a highly intimate or embarrassing nature. Many things are embarrassing to a juvenile that might not necessarily be so embarrassing to an adult. Having one's name plastered in the headlines of a local newspaper as being the victim of a sexual assault would be extremely embarrassing to most juveniles. Being identified on the front page of a newspaper as being the victim of child abuse would not be the most flattering thing that could happen to a child whose peers are old enough to read. Those are but two examples of highly intimate and embarrassing facts that could cause protection by the common law

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right of privacy.

Section 3(a)(1) also exempts from disclosure information that is exempted by statute. Although the writer in this demand for records instructs me that the Juvenile Code relates only to juveniles who commit crimes, Section 51.14(c) says otherwise.

> (c) Law-enforcement files and records concerning a child shall be kept separate from files and records of arrests of adults and shall be maintained on a local basis only and not sent to a central state or federal depository. However, the law-enforcement files and records of a person who is transferred from the Texas Youth Commission to the Texas Department of Corrections under a determinate sentence may be transferred to a central state or federal depository for adult records on or after the date of transfer.

Section 51.01(1) says that it is a public service of Title 3 of the Family Code:

> (1) to provide for the care, the protection, and the wholesome moral, mental, and physical development of children coming within its provisions.

It is difficult to understand why the legislature would intend to provide more protection from public scrutiny to juvenile perpetrators of crime than it would to juvenile victims of crime. Why does not society have the same interest in rehabilitating a juvenile crime victim as it purportedly does in rehabilitating a juvenile criminal?

Common decency should dictate that the names of juvenile crime victims should be protected from disclosure, but common decency and the newspaper business share little common ground. It is difficult to understand why the wishes of society as expressed by the legislature would be to allow the exploitation of the identities and likenesses of hapless juvenile crime victims for the purposes of selling advertising; but perhaps society's voyeuristic interest overrides its concern for the well-being of its children.

Sections 3(a)(3) and 3(a)(8) provide only limited restrictions on the disclosure of police records, which is where the names of juvenile crime victims would logically be located. Section 3(a)(3) provides a limited restriction on disclosure of records while litigation is contemplated or in progress. We would hope that a crime perpetrated on a juvenile would lead to prosecution, but that does not cure the problems caused by the Houston Cronicle decision or those problems which arise after the litigation has been concluded. Section 3(a)(8) suffers those same problems and neither section really provides any protection if full protection is not provided by Section 3(a)(1).

The Houston Cronicle decision has been eroded to some extent by the Texas Legislature in Acts 1991, 72nd Leg., Ch. 202, p. 828, wherein the Code of Criminal Procedure was amended to remove a crime victim's address and telephone number from court records. Nothing was said about removing the same information from the portion of the police records that were determined to be open to public inspection in the Houston Cronicle decision; but logic should dictate that if such information should not be open to the public in court files, it should not be available to the public in police reports. The point is that Houston Cronicle does not support the proposition of openness that it once did, and it should not be read to allow the random defamation of juvenile crime victims.

Section 34.08(a), Texas Family Code, makes confidential the reports and records relating to investigations of child abuse. Section 34.02(c) broadly requires all reports of child abuse, under all its definitions, received by a law-enforcement agency to be submitted to the Texas Department of Human Services, which then holds the reports in confidentiality. What purpose does that confidentiality serve if the law-enforcement agency has previously released the information for publication in the newspaper?

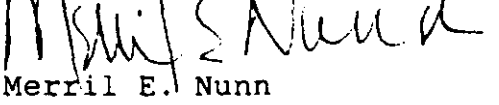
Section 71.111, Texas Family Code, authorizes a court to enter an order which limits access to information related to a child, but that order does little good if a law-enforcement agency has been required by the Open Records Act to release the same information for publication.

I suppose it logically follows that if the names of juvenile crime victims are available for publication, then full disclosure of such information relating to crimes under Sections 42.25 and 42.26, Texas Penal Code, would be required.

There are many other laws which either touch or directly affect this subject which should be mentioned, but ten days time with intervening holidays and weekends in which to respond to a demand for production does not allow the time for exhaustive research. The prohibitions against disclosure of protected information in Sections 10(a) and (e) of the Texas Open Records Act require that the protections from disclosure be asserted to an extent that would allow a positive decision, if not to an extent that exhausts the subject.

If we can provide additional information, please so advise.

Sincerely yours,



Merril E. Nunn

Enclosures