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ATTORNEY GENERAL

Office of the Attorney General
State of Texas

February 4, 1991

Mr. William J. Delmore, III
General Counsel
Office of the District Attorney
Harris County
201 Fannin St., Suite 200
Houston, Texas 77002

OR91-075

Dear Mr. Delmore:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 10278.

You have received a request for records relating to an allegation of sexual abuse of a minor. The information includes reports from the Klein Independent School District Police Department, the Klein Police Department, notes and diaries written by high school students, and materials produced by your office.

You inform us that, at the time of the request, the investigation was closed and that no charges were filed. However, in a recent letter, you have informed us that the investigation is not closed; rather, it is "suspended" pending further investigation. You have accompanied your letter with a signed affidavit stating that prosecution was not initiated at the request of the alleged victim, but that the file has been retained by your staff and that the matter would be presented to the grand jury if the family of the alleged victim requested prosecution or if additional evidence is adduced.

You assert that the information requested is excepted from required public disclosure under sections 3(a)(1) and 3(a)(8) of the Open Records Act. We will turn first to section 3(a)(8).

Section 3(a)(8) of the act excepts from disclosure

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

In Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 277 (Tex. Civ. App. - Houston [14th Dist] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976), the courts specified which information found in a police file of a criminal investigation conducted by the Houston police department was excepted from required disclosure and which information must be disclosed. The court case and the decisions that have relied upon it concluded that information that is typically found on the first page of an offense report must be disclosed, but that the remaining portions of the police investigative file are excepted from required public disclosure under section 3(a)(8). See, e.g., Open Records Decision No. 127 (1976).

In Open Records Decision No. 408 (1984), this office was asked whether information in a police file of a criminal investigation is excepted from disclosure when the file is in "suspended" status. While noting that decisions issued subsequent to Open Records Decision No. 127 had modified it somewhat, see e.g., Open Records Decision No. 339 (1982), Open Records Decision No. 408 quoted the following language from Open Records Decision No. 366 (1983) in concluding that information other than that specifically held to be open in Open Records Decision No. 127 was excepted from disclosure:

We believe that the meaning of [recent] decisions is abundantly clear: information . . . ordinarily found on the first page of an offense report is . . . not protected by . . . section 3(a)(8), except in circumstances where the release of particular information would unduly interfere with law enforcement or crime prevention, Ex parte Pruitt, 551 S.W.2d 706, 710 (Tex. 1977), or conflict with an individual's constitutional or common law right of privacy. Open Records Decision No. 408 at 5-6. (emphasis in original); see also Open Records Decision No. 286 (1981). Accordingly, we conclude that in this instance, information

ordinarily found on the first page of an offense report is not protected by section 3(a)(8) except where release of that information would conflict with an individual's right of privacy.

Section 3(a)(1) of the act excepts from disclosure

information deemed confidential by law, either Constitutional, statutory, or by judicial decision.

Section 3(a)(1) applies to information made confidential by common-law privacy. Texas courts recognize four categories of common-law privacy, extending protection to, inter alia, the public disclosure of private facts. Information may be withheld under this prong of common-law privacy, if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977).

In Open Records Decision No. 393 (1983), this office was asked whether police reports regarding the sexual abuse of a child are excepted under the act.¹ In that decision we stated:

The report at issue here consists almost entirely of detailed statements of the officers who investigated these crimes, and statements of the complainant, witnesses, and others. Each of these statements refers repeatedly to the victim of these crimes or to the victim's relatives, and each also contains abundant information which could

1. You do not indicate that any of the information requested was received pursuant to chapter 34 of the Family Code, which sets forth requirements regarding reports of child abuse. See Open Records Decision No. 440 (1986). Therefore, for purposes of this letter, we will assume that chapter 34 is inapplicable.

easily furnish a basis for identification of the victim. For the reasons discussed in Open Records Decision No. 339 (1982), we conclude that the information which either identifies or would tend to identify the victim may be withheld under the common law right of privacy. We further conclude that this identifying information accounts for such a large part of the police report and is so inextricably intertwined with the remainder of this report that it would be unfeasible to attempt to separate the remainder and make it available. The nonidentifying information would, if separated, be devoid of meaning. We therefore conclude that you may deny this request in its entirety.

Open Records Decision No. 393 at 2. In this instance, we conclude that any information protected by section 3(a)(8) would identify or tend to identify the victim, and that such information is so inextricably intertwined with the remainder of the report that it would be unfeasible to separate the remainder and make it available.

We have considered the exceptions you claimed, specifically sections 3(a)(1) and 3(a)(8), and have reviewed the documents at issue. Previous determinations of this office, Open Records Decision Nos. 408 and 393, copies of which are enclosed, resolve your request. For this reason, you may withhold the requested information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-075.

Yours very truly,



Jim Moellinger
Assistant Attorney General
Opinion Committee

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Ref.: ID# 10278, 10714, 10734, 10643, 10500, 10677, 10733,
10900, 11143, 11219

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Enclosure: Open Records Decision Nos. 408, 393 (1983)

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