



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 4, 1993

Mr. Kevin W. Kapitan
Assistant City Attorney
Police Legal Advisor
Fort Worth Police Department
350 W. Belknap Street
Fort Worth, Texas 76102

OR93-263

Dear Mr. Kapitan:

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# 19077.

The City of Fort Worth received separate open records requests from two attorneys, both purporting to represent the same individual who was the victim of a sexual assault. Specifically, the requestors both seek to obtain a copy of a transcript of the "911" call which the victim made to the Fort Worth Police Department (the "department"). One of the requestors also seeks a copy of a tape recording of that call. You explain that the department "does not as a matter of routine accomplish transcriptions of such material since [your office is] not so equipped." You have, however, submitted to this office for review a copy of the tape recording of the "911" call. You contend that the recording comes under the protection of section 3(a)(8) of the Open Records Act.

Whether section 3(a)(8), the "law enforcement" exception, excepts records from required public disclosure depends on whether the release of the records would "unduly interfere" with law enforcement or prosecution. Open Records Decision Nos. 434 (1986); 287 (1981). One of the purposes of the exception is to protect law enforcement and crime prevention efforts by preventing suspects and criminals from using records in evading detection and capture. See Open Records Decision Nos. 133, 127 (1976).

In *Houston Chronicle Publishing Co. 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), the court of civil appeals established the guidelines on what constitutes public information contained in police files. The court's holding was summarized in Open Records Decision No. 127, indicating that information typically contained in the front page of offense reports is public information. Police departments may, however, elect not to disclose information from the front page of offense reports if the department

demonstrates that the release of information would unduly interfere with crime prevention efforts. Open Records Decision No. 409 (1984). Whether disclosure of particular records will unduly interfere with crime prevention must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981).

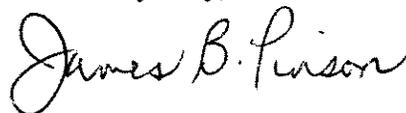
The tape recording at issue here contains the same types of information that typically appears on the front page of an offense report. The types of information held to be public in *Houston Chronicle* must be released regardless of where that information appears. See, e.g., Open Records Decision No. 611 (1992). You have not identified, nor does a review of the recording reveal, any information which, if released, would unduly interfere with the department's investigation of the assault. Accordingly, we find that you have not met your burden of establishing the applicability of section 3(a)(8).

This is not to say that the tape recording constitutes public information. We note that the content of the tape clearly implicates the privacy interests of the crime victim. Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision," including the common-law right to privacy. *Industrial Found. of the S. 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. See also Open Records Decision No. 470 (1987) (evidence of severe emotional stress is protected by common-law privacy).

In this instance, however, because you have not established the applicability of any of the act's other exceptions to required public disclosure, the crime victim or her authorized representative has, beyond the right of the general public, a special right of access to the tape recording. See V.T.C.S. art. 6252-17a, § 3B. If the department has not yet established whether the requestors are the victim's authorized representatives, it should take affirmative steps to do so at this time. Once the department is satisfied that a requestor is an authorized representative of the victim, the requested information must be released to that individual pursuant to section 3B of the Open Records Act.

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 contact our office.

Yours very truly,



James B. Pinson
Assistant Attorney General
Opinion Committee

JBP/RWP/le

Ref.: ID# 19077
ID# 19161

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