



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 20, 1994

Ms. Tracy R. Briggs
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR94-249

Dear Ms. Briggs:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 25942.

The City of Houston (the "city"), through its police department, has received a request for a certain offense report. Specifically, the requestor seeks "an offense report concerning an alleged child molestation incident involving a Barrick Elementary school teacher named Salvador Diaz." You advise us that the city has made some of the requested information available to the requestor. You seek to withhold the remaining information, which you have submitted to us for review, and claim that sections 552.101, 552.103, and 552.108 of the Government Code except it from required public disclosure.

Section 552.108 of the Government Code excepts from required public disclosure:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.

In cases that are still under active investigation by a law enforcement agency, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally 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); Open Records Decision No. 127 (1976).

You advise us that the requested information relates to an on-going investigation by the city police department into allegations of child sexual abuse. Accordingly, we conclude that section 552.108 of the Government Code excepts from required public disclosure all information except that generally found on the first page of the offense report.¹

You also advise us that the city does not object to releasing the information on the first page of the offense report, but assert that section 552.101 of the Government Code in conjunction with common-law privacy excepts information that identifies or tends to identify the juvenile victim of the alleged offense. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Information may be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 552.101 of the act by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing *and* is of no legitimate concern to the public. In Open Records Decision No. 393 (1983), this office concluded that common-law privacy protects information which identifies or would tend to identify a victim of a serious sexual offense. *See also* Open Records Decision No. 339 (1982).

We have examined the information submitted to us for review. We agree that the information that you seek to withhold under section 552.101 of the Government Code would identify or tend to identify the victim of a serious sexual offense. Accordingly, we conclude that you may withhold this information from required public disclosure under section 552.101 of the Government Code. Because we resolve this matter under sections 552.101 and 552.108 of the Government Code, we need not address the applicability of section 552.103 at this time.

¹We note, however, that the location of the information is not determinative of its status. The information identified by the court in *Houston Chronicle Publishing Co.* as information generally found on the first page of the offense report must be released regardless of where it is found. 531 S.W.2d at 186-87; *see* Open Records Decision No. 127 at 5. For example, information regarding an arrestee is information generally found on the first page of an offense report regardless of its actual location. Open Records Decision No. 127. Therefore, you need to examine the type of information rather than its location to determine what information must be released as information generally found on the first page of the offense report.

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 this office.

Yours very truly,

A handwritten signature in black ink that reads "Margaret A. Roll". The signature is written in a cursive style with a large, prominent "R" at the end.

Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 25942

cc: Mr. David Raziq
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P.O. Box 13
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(w/o enclosures)