



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 14, 1994

Mr. Charles E. Griffith, III
Deputy City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR94-547

Dear Mr. Griffith:

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# 27064.

The City of Austin (the "city") has received a request for information relating to a closed aggravated robbery and sexual assault investigation. Specifically, the requestor seeks "for inspection and/or copying the Austin Police Department's case file number 91-3420615 pertaining to the aggravated robbery and sexual assault . . . [including] all statements made by the complainant, all statements obtained from Brian Caruthers, all other oral or written statements obtained from any person possessing knowledge of the facts relevant to the criminal case, all handwritten notes or written reports prepared by the staff of the Austin Police Department or investigating officer, all incident or offense reports, and all videotapes contained in the file." You have submitted the requested information to us for review and claim that section 552.101 of the Government Code exempts some of it from required public disclosure.

Section 552.101 exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." At the outset, we note that state and federal statutes make some of the submitted information confidential. The submitted materials appear to include criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") and the Texas Crime Information Center ("TCIC"). Except in circumstances not applicable here, title 28, part 20 of the Code of Federal Regulations prohibits the release of CHRI which states obtain from the federal government or other states. Open Records Decision

No. 565 (1990). These regulations also allow each state to follow its individual law with respect to CHRI the state generates. *Id.* Section 411.084 of the Government Code prohibits the release of CHRI obtained from the Department of Public Safety. The city must therefore withhold the submitted CHRI from required public disclosure.

The submitted information also includes records governed by the Medical Practice Act, V.T.C.S. article 4495b. Section 5.08(b) of the Medical Practice Act provides that "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician" are confidential. Records must be kept confidential under article 4495b only if they are actually prepared or maintained by a physician. Attorney General Opinion JM-229 (1984) at 2; Open Records Decision No. 343 (1982) at 1. Some of the records submitted to us for review were prepared by a physician. These records have been marked and must be withheld from required public disclosure under section 552.101 of the Government Code.

Finally, we address your contention that common-law privacy makes some of the requested information confidential. 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 that identifies or would tend to identify a victim of a serious sexual offense. *See also* Open Records Decision No. 339 (1982).¹

We have examined the information submitted to us for review. We agree that some of it would identify or tend to identify the victim of a serious sexual offense. We conclude that any photographs identifying the victim must be withheld from required public disclosure under section 552.101 or must be rendered such that they do not identify the victim. In addition, you must withhold the submitted videotape in its entirety, because it identifies the victim and otherwise contains information that is intimate or embarrassing. We have marked the submitted documents to indicate the type of information that you must withhold from required public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. The remainder of the requested information, except as noted above, must be made available to the requestor.

¹*But see Star Telegram v. Walker*, 834 S.W.2d 54 (1992) (court cannot prevent a newspaper from publishing a rape victim's identity when lawfully obtained from the public record). Thus, to the extent that such information is included in public court records, the city may not now withhold it from public disclosure on the basis of common-law privacy.

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,



Margaret A. Roll
Assistant Attorney General
Open Government Section

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Enclosures: Marked documents

Ref.: ID# 27064

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(w/o enclosures)