



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 6, 1995

The Honorable Daniel C. Rice
District Attorney
Montgomery County
301 North Thompson, Suite 106
Conroe, Texas 77301-2824

OR95-110

Dear Mr. Rice:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30987.

The Montgomery County District Attorney's Office received two open records requests for all records pertaining to the arrests, investigations and trials of three named individuals: Alvin Urial Goodwin, Delbert Burkett, and Glenn Dier. Although you initially contended that your office was not required to provide copies of these records to the requestor, who is representing Goodwin in a pending federal habeas corpus proceeding, you inform this office that, in the interest of due process, you have with one exception made the entire Goodwin file available to the requestor for inspection and copying; consequently, your request for an open records decision regarding those records is now moot. You inquire, however, as to whether your office must release a copy of victim impact statement contained in the Goodwin file. Article 56.03 of the Code of Criminal Procedure provides for the creation of victim impact statements and provides in pertinent part:

The court may not inspect a victim impact statement until after a finding of guilt or until deferred adjudication is ordered and *the contents of the statement may not be disclosed to any person unless:*

(1) *the defendant . . . is convicted of the offense.*

Code Crim. Proc. art. 56.03(f)(1). It thus appears that your office has the discretion, but is not required, to release the victim impact statement to the requestor acting on behalf of Goodwin.

We next address the extent to which records in the Burkett prosecution files are excepted from public disclosure. The requestor specifically seeks

all files, records and any other documents in the possession of the Montgomery County District Attorney's Office pertaining to the arrest, investigation and/or trial of Delbert Burkett for any criminal violations committed in Montgomery for the years 1978 through 1992.

It is apparent to this office that the requestor is in effect requesting that you compile a history of Burkett's criminal record in Montgomery County.

Section 552.101 excepts information coming within the protection of common-law privacy. *Industrial Found. 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. In *United States Department of Justice v. Reporters Committee For Freedom of the Press*, 489 U.S. 749 (1989), the Supreme Court concluded that where an individual's criminal history is compiled or summarized *by governmental entity*, the information takes on a character that implicates the individual's right of privacy in a manner that the same individual records in an uncompiled state do not. *See also* Open Records Decision No. 144 (1976) (Open Records Act does not require law enforcement agency to compile list of individual's criminal convictions). Accordingly, because your compliance with this aspect of the open records request would require your office to compile Burkett's criminal history, this portion of the open records request must be denied.¹

Finally, we address whether your office may release to the public the contents of the Dier file. This file pertains to the criminal prosecution of Dier for the sexual assault of a child. Chapter 34 of the Family Code concerns, among other things, reports of child abuse to local law enforcement agencies. Section 34.08(a) of the Family Code provides:

Except as provided in Subsections (b) and (c) of this section, the reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes consistent with the purposes of this code under regulations adopted by the investigating agency.

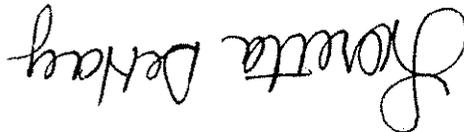
¹On the other hand, to the extent that the requestor can identify specific offenses for which Burkett has been arrested, *e.g.*, through public court records or other sources, your office may properly release "original records of entry . . . compiled chronologically and required by law . . . to be made public" pertaining to such offenses without violating Burkett's right of privacy. *See* 28 C.F.R. § 20.20(c).

Subsections (b) and (c) relate to the disclosure of records concerning an investigation of an adopted child to the adoptive parents, prospective adoptive parents, or to the child upon reaching adulthood. Neither subsection is applicable to the current request.

Because you have not cited any specific regulation that your office has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, the records at issue are confidential pursuant to section 34.08(a) of the Family Code. See Open Records Decision No. 440 (1986) at 2. Accordingly, your office must withhold this file in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/KKO/RWP/rho

Ref: ID# 30987

Enclosures: Submitted documents

cc:

Mr. Lynn B. Lamberty
Texas Resource Center
Vieux Carre Building
3223 Smith Street, Suite 215
Houston, Texas 77006
(w/o enclosures)