



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 28, 1995

Mr. G. Chadwick Weaver
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR95-900

Dear Mr. Weaver:

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# 30505.

The City of Midland (the "city") received a request for "copies of the original case" file concerning an aggravated kidnapping that occurred in 1974. You contend that portions of the requested records are excepted from required public disclosure under sections 552.101 and 552.108 of the Government Code.

After a file has been closed, either by prosecution or by administrative decision, section 552.108 excepts information from disclosure when the release of the records would unduly interfere with the prevention of crime and the enforcement of the law. Open Records Decision No. 553 (1990) at 4 (and cases cited therein). A governmental body claiming the "law enforcement" exception must reasonably explain how and why release of the requested information would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 434 (1986) at 2-3.

You claim that the information highlighted on pages 2, 3, 4, 6, 7, 8, and 9 "would reveal law enforcement crime prevention techniques and thereby interfere with law enforcement and endanger the public. We disagree. The documents do not reveal any secrets not known outside of the law enforcement community. We cannot see how releasing the information would unduly interfere with law enforcement. You may not withhold this information under section 552.108.

For information to be protected from public disclosure under the common-law right of privacy as section 552.101 incorporates it, the information must be highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and the information must not be of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. art. 6252-17a, § 3(a)(1)).

You contend that the names of two individuals contained in the records that were listed as suspects in a serious criminal investigation but never arrested should be withheld under privacy concerns. We disagree. We consider your argument an attempt to raise the tort doctrine of false-light privacy. "Information actionable under the tort doctrine of false-light privacy is not within section [552.101] protection of information deemed confidential by law." Open Records Decision No. 579 (1990) (quoting from the summary).¹ Moreover, this office ruled in Open Records Decision No. 408 (1984) that there is a legitimate public interest in knowing the names of persons arrested and indicted for felony offenses, even when the indictment is later dismissed; any embarrassment can be mitigated by also releasing the fact that the indictment was dismissed. It is clear from the documents that the suspects were not involved in the crime at issue. Accordingly, you may not withhold this information under section 552.101.

Section 552.101 also excepts from required public disclosure "information considered to be confidential by law." This section incorporates confidentiality statutes into the Open Records Act. You contend that "the woman's name on pages 13-15 of the report is exempt from disclosure as she was 16 at the time she participated in the offense." You further aver that "it is well-settled that the identity of juvenile actors in the commission of crimes are provided protection under the law." The crime in question was committed in 1974, but the female in question was not arrested until 1976 after she had turned eighteen. We do not believe that the female would be considered a "child" for purposes of title 3 of the Family Code under the controlling law at that time. As this information is not confidential by law, it must be released.

¹Although Open Records Decision No. 308 (1982) stated that this office was required to apply the false-light privacy tort law to determinations under section 552.101, that decision was reconsidered and overruled in Open Records Decision No. 579 (1990), which dealt with the investigation of a complaint of sexual harassment. Accordingly, the tort doctrine of false-light privacy is not within the protection of section 552.101 as information deemed confidential by law.

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,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/LBC/rho

Ref: ID# 30505

Enclosures: Submitted documents

cc: Mr. James T. Young
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(w/o enclosures)