



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 6, 1995

Mr. Kevin Raymond
Assistant General Counsel
Legal Services
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR95-1046

Dear Mr. Raymond:

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# 33178.

The Texas Department of Public Safety (the "department") received a request for copies of 29 categories of documents that relate to the requestor "and the investigation of events leading to the [department's] preliminary determination of dismissal." You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.102, 552.107, and 552.103 of the Government Code. You have submitted samples of the documents requested.¹

You claim that section 552.101 excepts certain of the requested information from required public disclosure.² Section 552.101 excepts from required public disclosure information "confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes.

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²You claim that chapter 57 of the Code of Criminal Procedure makes confidential the identity of the victim of a sexual assault. However, you have not indicated that the victim chose a pseudonym to identify her as provided by article 57.02 of the Code of Criminal Procedure. Therefore, we cannot say that this chapter applies to except the identity of the victim from disclosure.

Section 261.201(a) of the Family Code makes records of law enforcement agencies generated pursuant to an investigation of child abuse under the Family Code confidential by law.³ See Open Records Decision No. 628 (1994) at 5 (applying former section 34.08(a)). We are unable to determine from the documents submitted whether they were derived from or part of an investigation under former section 34.08(a).⁴ If they were not derived from or part of an investigation under former section 34.08(a), you must withhold information that would tend to identify the victim of the sexual assault.⁵ You may not withhold the remainder of the information. If, however, the documents were derived from or part of an investigation under former section 34.08(a), you must withhold all of the related documents in their entirety.

You also assert that section 411.085 of the Government Code, applied through section 552.101 of the Government Code, excepts criminal history record information ("CHRI") of all persons except the requestor. Section 411.083 of the Government Code provides that any CHRI maintained by the department is confidential. You state that you do not intend to withhold the requestor's own CHRI contained in the investigatory file. We agree that the department must withhold from the requestor CHRI on other individuals.

You claim that portions of the information responsive to numbers 26 and 27 of the request are protected from disclosure by privacy. Section 552.101 encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

Section 552.101 also excepts information that is confidential under constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: 1) the right to make certain kinds of decisions independently, and 2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4.

³Title 2 of the Family Code, which includes section 34.08, was repealed in the most recent legislative session. Section 261.201(a) of the new Title 2, effective April 20, 1995, is substantively the same as section 34.08(a) of the previous Title 2. Act of April 6, 1995, 74th Leg., R.S., ch. 20, § 1, 1995 Tex. Sess. Law Serv. 113, 262, 282 (Vernon).

⁴We note that you state that much of the requested material pertains to an investigation of a sexual assault of a juvenile.

⁵We have marked the submitted information to indicate the type of information that must be withheld if these documents were not derived from or part of an investigation under former section 34.08(a) of the Family Code.

The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987); and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We conclude that the department must withhold portions of the requested information that are responsive to request nos. 26 and 27 under section 552.101. We have reviewed the documents submitted for our consideration and have marked the type of information that must be withheld under constitutional or common-law privacy.⁵

We note that a peace officer's home address and home telephone number are contained on some of these documents. A peace officer's home address and home telephone number are excepted from disclosure under section 552.117 of the Government Code. Therefore, this information must be withheld.⁶

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. We conclude that the submitted document numbered 002001 contains an attorney's legal advice or opinions and may be withheld in its entirety.⁷

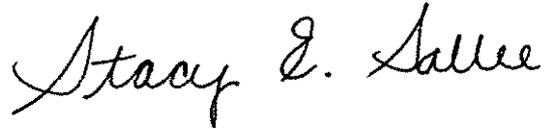
⁵We note that in *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. Therefore, we need only address whether section 552.101 applies to these documents.

⁶We note that section 552.117 of the Government Code was amended in the last legislative session. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 9, 1995 Tex. Sess. Law Serv. 5127, 5132 (Vernon). As this request for information was received before the effective date of the new law, we do not address the application of the amended section 552.117 to the requested information.

⁷We note that in your original correspondence, you claimed that section 552.103 of the Government Code excepted certain of the requested information from disclosure. However, you did not submit any arguments as to why section 552.103 applies to any specific documents, nor did you submit

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,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/rho

Ref.: ID# 33178

Enclosures: Marked documents

cc: Mr. Michael Young
(w/o enclosures)

(Footnote continued)

samples of documents to which you believe section 552.103 applies. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). We conclude that the department has not met its burden as to section 552.103 and that the department may not withhold any documents under this exception.