Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 27, 1997

The Honorable Al Schorre
District Attorney
Midland County
200 W. Wall, Suite 201
Midland, Texas 79701

OR97-1930

Dear Mr. Schorre:

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# 108667.

The District Attorney received a request from ABC News 20/20 for copies of cases from March 1987 to March 1997 in which police officers, sheriffs, and sheriff's deputies engaged in "lewd and lascivious behavior." ABC News 20/20 later clarified the request as follows:

> [W]e would like to request any and all copies of documents pertaining to the rape and/or sexual assault of civilians by law enforcement officers in the state of Texas. These records should include rape, sexual assault, sexual battery, lewd and lascivious behavior by police officers, sheriff's [sic], sheriff's deputies or other individuals who have taken an oath, and who operate under a badge of authority. We would like such records to reflect the time period from March 1987 to March 1997.

You claim that your responsive files are excepted from required public disclosure pursuant to section 552.108 of the Government Code.

From the information provided, it appears that the files at issue fall into one of three categories: 1) files that do not involve either the sexual assault of an adult or the abuse of a child; 2) files involving the sexual assault of an adult; or 3) files involving the abuse of a child. We will consider the disclosure of these three types of files separately.[1]

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[1]Files from all three categories may contain criminal history information. Criminal history information obtained from the National Crime Information Center or the Texas Crime Information Center is generally confidential

1) Files that do not involve either the sexual assault of an adult or the abuse of a child

Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n 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." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). We note, however, that information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publ'g 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). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. We have enclosed a summary of Open Records Decision No. 127 (1976) which lists the types of information that the *Houston Chronicle* court classified as front page offense report information.

In addition to releasing front page offense report information from these files, you must also release documents that have been filed with a court. Documents filed with a court are generally considered public. *See Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992); Attorney General Opinion DM-166 (1992). Therefore, you must make these documents, as well as the front page offense report information, available to the public. Section 552.108 provides that you may withhold the remaining information in these files from disclosure, although you may choose to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

2) Files involving the sexual assault of an adult

Files involving the sexual assault of an adult should be treated like the files discussed in category 1), with one exception: Any information that identifies a victim of sexual assault must be withheld from disclosure under section 552.101 of the Government Code in conjunction with the common-law right to privacy. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The common-law right to privacy, incorporated into the Open Records Act by section 552.101, protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person *and* the public has no legitimate interest in it. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim

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by law. 28 C.F.R. § 20; Gov't Code § 411.083. Criminal history information that has been compiled by a governmental entity is protected by the common-law right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). You must withhold criminal history information from disclosure under section 552.101 of the Government Code as information deemed confidential by law.

has a common-law privacy interest that prevents disclosure of information that would identify her/him.

Thus, if you have files involving the sexual assault of an adult, you must withhold information that identifies the adult victim pursuant to section 552.101 in conjunction with the common-law right to privacy, even though such information is generally considered front page offense report information under *Houston Chronicle*. Of course, you must release all other front page offense report information. As with the category 1) files, section 552.108 provides that you may withhold the remaining information in these files from disclosure, or you may choose to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

3) Files involving the abuse of a child

Child abuse investigation files are confidential by law and therefore must be withheld from disclosure under section 552.101 of the Government Code. Section 261.201(a) of the Family Code provides:

> (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:
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> (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report;
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> (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

The other provisions of section 261.201 do not appear to apply here. We also are not aware of any rules promulgated by your office which permit the dissemination of this type of information. Accordingly, we conclude that child abuse files are confidential under section 261.201 of the Family Code and must be withheld from disclosure in their entirety pursuant to section 552.101 of the Government Code. *See* Open Records Decision No. 440 (1986) (applying former Fam. Code § 34.08).

We are resolving this matter with an informal letter ruling rather than with a published open records decision.[2] This ruling is limited to the particular records at issue under the facts presented

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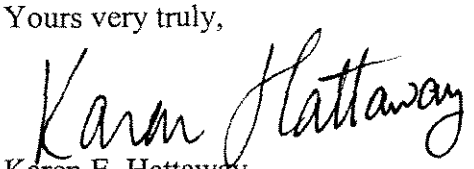
[2]Because we are able to resolve this matter under sections 552.101 and 552.108 of the Government Code, we do not address your other arguments against disclosure.

to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 108667

Enclosures: Summary of Open Records Decision No. 127 (1976)

cc: Ms. Karen Burnes
Producer
ABC News 20/20
147 Columbus Avenue
New York, New York 10023-5900
(w/ - Summary of Open Records Decision No. 127 (1976))

SUMMARY OF OPEN RECORDS DECISION NO. 127 (1976)

I. TYPES OF INFORMATION AVAILABLE TO THE PUBLIC

1. Arrestee's social security number, name, aliases, race, sex, age, occupation, address, police department identification number, and physical condition
2. Offense for which suspect arrested
3. Identification and description of complainant
4. Location of crime
5. Time of occurrence
6. Vehicle involved
7. Property involved
8. Detailed description of offense
9. Names of arresting officers
10. Date and time of arrest
11. Place of arrest
12. Details of arrest
13. Description of weather
14. Booking information
15. Court in which charge is filed
16. Notation of any release or transfer
17. Bonding information
18. Numbers for statistical purposes relating to modus operandi of those apprehended

II. TYPES OF INFORMATION PROTECTED BY SECTION 552.108

1. Identification and description of witnesses
2. Synopsis of confession
3. Officer's speculation as to suspect's guilt
4. Officer's view of witness credibility
5. Statements by informants
6. Ballistics reports
7. Fingerprint comparisons
8. Blood and other lab tests
9. Results of polygraph test
10. Refusal to take polygraph test
11. Paraffin test results
12. Spectrographic or other investigative reports
13. Personal History and Arrest Record, including
    A. Identifying numbers (such as TDC numbers)
    B. Physical description with emphasis on scars and tattoos
    C. Marital status and relatives
    D. Mugshots, palm prints, fingerprints, and signature
    E. Chronological history of any arrests and disposition

See Open Records Decision No. 127 (1976).