



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 20, 1998

Ms. Tamara Armstrong  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR98-1265

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115261.

Travis County (the "county") received a request for all information relating to the Absent Student Assistance Program. You state that you have released some of the information to the requestor. You contend that the remaining responsive information is excepted from disclosure pursuant to sections 552.101, 552.107, 552.108, and 552.111 of the Government Code. You have submitted a representative sample of the information at issue, exhibits A through D, to this office for review.<sup>1</sup>

Exhibit A contains records that you contend are excepted from disclosure under section 552.101 of the Government Code<sup>2</sup> in conjunction with Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007 applies to the records of child who is ten years of age or older and under seventeen years of age, or who is seventeen years of age or older and under eighteen years of age and has engaged in delinquent conduct or conduct indicating a need for supervision before becoming seventeen years of age. Fam. Code § 51.02(2). The unexcused voluntary absence of a child for ten or more days or parts of days in a six month period, or for three or more days or parts

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<sup>1</sup>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.

<sup>2</sup>Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

of days in a four week period from school without the consent of his parents constitutes conduct indicating a need for supervision under the Family Code. Fam. Code § 51.03(b). Records relating to such conduct are confidential under section 58.007 and must be withheld from disclosure under section 552.101 as information made confidential by law.

Exhibit A also contains records relating to conduct that does not constitute delinquent conduct or conduct indicating a need for supervision. These records are not confidential under section 58.007 of the Family Code. You contend, however, that these records are protected by the constitutional right to privacy, and that they are also excepted from disclosure under section 552.108 of the Government Code.

Section 552.101 of the Government Code encompasses the doctrines of common-law and constitutional privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

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. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* 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). Having reviewed the records in exhibit A, we find that they are not protected by the common-law or constitutional rights to privacy.

Section 552.108 of the Government Code provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An 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 is excepted from the requirements of Section 552.021 if: (1) release of the internal record or notation would interfere with law enforcement or prosecution; (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) the internal record or notation: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

A governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would interfere with law enforcement. *See* Gov't Code § 552.301(b)(1); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Your only arguments for withholding exhibit A under section 552.108 are based on the your assessment of the requestor's motives for obtaining the information. However, the Open Records Act prohibits the consideration of the motives of the requestor. *See* Gov't Code 552.222(a); Open Records Decision Nos. 542 (1990), 508 (1988). Since you offer no other section 552.108 arguments for exhibit A, we must conclude that section 552.108 does not protect exhibit A from disclosure. Therefore, except for those portions of exhibit A that are confidential under section 58.007 of the Family Code, you must release exhibit A.

Next, you contend that exhibit B is an internal law enforcement record that is excepted from disclosure under section 552.108(b)(1). It is not apparent to us, and you have not explained, how releasing exhibit B would interfere with law enforcement. Thus, we conclude that exhibit B is not excepted from disclosure under section 552.108 and must be released to the requestor.

You contend that the highlighted information in exhibit C is excepted from disclosure pursuant to section 552.107 of the Government Code. Section 552.107(1) protects 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(1) excepts from public disclosure only "privileged information," that is, information that reflects the client's confidential communications to the attorney and the attorney's legal advice or opinions. Open Records Decision No. 574 (1990) at 5-7. Section 552.107(1) does not, however, protect purely factual information. *Id.* Because the highlighted information in exhibit C appears to consist entirely of client confidences, we find that the county may withhold the highlighted information from disclosure pursuant to section 552.107(1).

Finally, you claim that the highlighted information in exhibit D is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. We have marked the information in exhibit D that may be withheld under section 552.111. The remaining information in exhibit D must be released.

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 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# 115261

Enclosures: Marked documents

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