

January 6, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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JOHN CORNYN
Attorney General

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Ms. Sharon Sela
Assistant City Attorney
Criminal Law & Police Division
1500 Marilla
Dallas, Texas 76201

OR99-0005

Dear Ms. Sela:

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# 120537.

The Dallas Police Department (the "department") received an open records request for the department's records pertaining to particular police calls for service. You state that some of the requested information will be released to the requestor. You seek to withhold other information coming within the scope of the request pursuant to section 552.101 of the Government Code.¹

You contend that one of the incident reports at issue must be withheld from the public pursuant to common-law privacy. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to 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.

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¹Although you did not request an open records decision regarding this matter in a timely manner, *see* Gov't Code § 552.301(a), because you have presented compelling reasons for withholding the information at issue, we will in this instance consider the applicability of section 552.101. *See* Open Records Decision No. 150 (1977).

This office has previously recognized that information might implicate an individual's common-law privacy interests if it relates, for example, to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures or emotional/mental distress. *See* Open Records Decision No. 370 (1983); *see also* Open Records Decision Nos. 343 (1982); 262 (1980). We have marked the information in this incident report that the department must withhold to protect the privacy interests of the complainant. The remaining information in this report must be released.

As noted above, section 552.101 of the Government Code also protects from public disclosure information made confidential by statute. One of the incident reports pertains to the alleged sexual assault of a child. Section 261.201(a) of the Family Code provides:

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:

(1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, *the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.* [Emphasis added.]

You have not informed this office of any rules the department has adopted that would permit access to this incident report. Because the information at issue pertains to an investigation of the sexual abuse of a child, this office concludes that the department must withhold this incident report in its entirety pursuant to section 261.201 of the Family Code.

You contend that the remaining incident reports concern reports of juvenile conduct. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided as follows:

Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a

criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Despite the repeal of section 51.14(d), law-enforcement records pertaining to juvenile conduct that occurred prior to the effective date of the repeal continue to be confidential under that section.² Please note, however, that because you have redacted from the records you submitted to this office all information identifying the accused individuals, including their respective birth dates, it is impossible for this office to determine the applicability of section 51.14(d) to many of the records at issue. Assuming that these records in fact pertain to juvenile conduct that occurred prior to January 1, 1996, we conclude that these records are governed by section 51.14(d) of the Family Code and that the department must withhold these incident reports in their entirety.³ *See also* Open Records Decision No. 181 (1977).

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 questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/ch

²See Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 106, 1995 Tex. Sess. Law Serv. 2591 (Vernon).

³In the future, the city should submit complete, unredacted copies of requested documents to this office when requesting an open records decision.

Ref.: ID# 120537

Enclosures: Marked documents

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(w/o enclosures)