



March 11, 1999

Ms. Deesha Brown
Assistant City Attorney
City of Dallas
2014 Main Street, Suite 206
Dallas, Texas 75201

OR99-0694

Dear Ms. Brown:

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# 122756.

The Dallas Police Department (the "department") received a request for several offense reports. You contend that some of the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the former section 51.14 of the Family Code, section 261.201 of the Family Code, and the common-law right to privacy. You also contend that one offense report is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed a representative sample of the documents at issue.¹

You state that the department received the written request for information on November 18, 1998. You did not seek an open records decision from this office until December 17, 1998, and, thus, you did not meet the statutory ten business day deadline for requesting a decision. *See Gov't Code* § 552.301. Your delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of section 552.101 generally constitutes a compelling reason.²

¹We 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.

²A governmental body may waive a claim under section 552.108 of the Government Code. *See* Open Records Decision No. 177 (1977) (custodian of records has discretion to release information even though the statutory predecessor to section 552.108 might except it from required disclosure). Thus, we have generally

Section 552.101 of the Government Code 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 Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 339 (1982), we concluded that the common-law right to privacy protects the identity of a sexual assault victim. Offense Report No. 0937413-A documents an incident of sexual assault. Therefore, we have marked the information in this offense report that identifies the sexual assault victim. The department must withhold this marked information from disclosure under section 552.101. The department must release the remaining information from this offense report.

You contend that Offense Report No. 0831188-B, which relates to an allegation of indecency with a child, is excepted from disclosure under section 552.101 in conjunction with section 261.201 of the Family Code. We note that Offense Report No. 0265843-B also relates to alleged sexual misconduct with a child. Section 261.201(a) of the Family Code provides as follows:

(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:

- (1) a report of alleged or suspected abuse or neglect 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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because Offense Report Nos. 0831188-B and 0265843-B relate to allegations of child abuse, the reports are within the scope of section 261.201 of the Family Code. We assume that the department has not adopted a rule that governs the release of this type of information. Given that assumption, these offense reports are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

held that the applicability of section 552.108 is not a compelling interest that overcomes the presumption of openness. You waived your section 552.108 interest in the requested information by failing to timely raise it. In this instance, we conclude that your section 552.108 claim is not compelling.

Accordingly, the department must withhold Offense Report Nos. 0831188-B and 0265843-B from disclosure under section 552.101 in conjunction with section 261.201 of the Family Code.

Finally, you contend that Offense Report No. 0216217-B is excepted from disclosure under section 552.101 in conjunction with the former section 51.14 of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). The former section 51.14 of the Family Code prohibits disclosure of records of juvenile offenders; it does not apply to records concerning juvenile crime victims. Open Records Decision No. 628 (1994). Offense Report No. 0216217-B relates to the alleged kidnaping of a child in 1993. The offender was an adult when he allegedly kidnaped the child. Thus, we conclude that Offense Report No. 0216217-B is not excepted from disclosure under section 552.101 in conjunction with the former section 51.14 of the Family Code. We note that a small amount of information in this report, which we have marked, is excepted from disclosure pursuant to section 552.130 of the Government Code and must be withheld.³ With the exception of the marked information, the department must release Offense Report No. 0216217-B to the requestor.

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.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 122756

³Section 552.130(a)(2) excepts from disclosure information that relates to a motor vehicle title or registration issued by an agency of this state.

Enclosures: Marked documents

cc: Mr. David Craft
Walker, Bright, & Whittenton, P.C.
3102 Oak Lawn Avenue, Suite 525
Dallas, Texas 75219
(w/o enclosures)