



November 8, 1999

Mr. G.M. Cox
Chief of Police
200 North 12th Street
Corsicana, Texas 75110

OR99-3171

Dear Mr. Cox:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129176.

The City of Corsicana Police Department (the "department") received a request for "police reports associated with alleged sexual assaults involving Brian Back." You seek to withhold the requested information under sections 552.102 and 55.108 of the Government Code. You have submitted samples of the responsive information.¹

You advise that three files responsive to the request involve charges of sexual indecency with a child. Although you did not raise section 552.101 with respect to this information, we believe that these three files are subject to section 552.101 in conjunction with section 261.201 of the Family Code. Section 552.101 of the Government Code requires withholding, *inter alia*, information made confidential by statute. Subsection (a) of section 261.201 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 . . . [the Family] code and applicable federal or state law or under rules adopted by an investigating agency:

¹In reaching our conclusion, we assume that the sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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.

(1) a report of alleged or suspected abuse or neglect made under . . . chapter [261 of the Family code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, and working papers used or developed in an investigation under . . . chapter [261 of the Family Code] or in providing services as a result of an investigation.

Because we have determined that the three files involving sexual indecency with a child are subject to section 261.201, this information may be disclosed only for purposes consistent with the Family Code and applicable federal or state law or under rules adopted by the department. Since you have not informed this office that the department has adopted any rules providing for release of this information, we conclude that these three files must be withheld in their entirety.

Section 552.108(a)(1) excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

Since we have disposed of the three responsive files dealing with indecency with a child, we need consider your section 552.108 claim only with respect to the remaining responsive information. Because you have informed us that these records pertain to pending criminal prosecutions, we conclude that you may generally withhold this information at this time pursuant to section 552.108(a)(1).

Section 553.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Such basic information would include the identities of the victims/complaints. *See* Open Records Decision No. 127 (1976). You advise, however, that one of the files which you sought to, and we determined that you could withhold under section 552.108, involves charges of sexual assault. Victim/complainant information in that file must be withheld under the privacy aspect of section 552.101.

Section 552.101 also protects "information considered to be confidential by . . . judicial

decision,” including information coming within the common-law right to privacy. *Industrial Found v. Texas Indus. Accident Bd.*, 540 S.W. 2d668 (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. The identities of victims of sexual assault protected by common-law privacy and must be withheld. See Open Records Decision No. 339 (1982).² Except for the identities of sexual assault victims, you must release “basic information from the files we have permitted you to withhold under section 552.108 in accordance with *Houston Chronicle Publishing Company v city of Houston*, 531 S.W.2d 177 (Tex. Civ. App--Houston [14th Dist.] 1975), *writ ref’dn.r.e per curiam*, 536 S.W.2d 559 (Tex. 1976).

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,



William Walker
Assistant Attorney general
Open Records Division

WMW/ljp

Ref: ID# 129176

Encl: Submitted documents

cc: Ms. Becky Miller
Special Projects Producer
KDFW - Dallas/Fort Worth Fox 4
400 North Griffin
Dallas, Texas 75202
(w/o enclosures)

²We understand your section 552.102 claim to be, in effect, a claim of common-law privacy protection. Since we have addressed common-law privacy protection under section 552.101, we need not separately address your section 552.102 claim.