



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 2, 2008

Ms. YuShan Chang
Assistant City Attorney
City of Houston
Legal Department
P. O. Box 1562
Houston, Texas 77251-1562

OR2008-06001

Dear Ms. Chang:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 309044.

The Houston Police Department (the "department") received a request for all information pertaining to a specified incident. You claim that the submitted incident reports, laboratory reports, and photographs are excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201(a) 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:

(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, 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.

Fam. Code § 261.201(a). You assert that the submitted incident reports and related documents in Exhibit 2, the photographs in Exhibit 3, and the laboratory and evidence documents in Exhibit 4 were used and developed in an investigation under chapter 261; however, the records reflect that they are part of an investigation of a child's homicide. Although the deceased child was also allegedly sexually abused, the investigation conducted by the department pertained to the child's homicide. Furthermore, although references to alleged sexual abuse of a child other than the homicide victim are present in Exhibit 2, the information in Exhibit 2 was not used or developed in the investigation of the alleged sexual abuse of that child. Thus, you have failed to demonstrate that the information submitted in Exhibits 2, 3, and 4 was used or developed in an investigation by the department of child abuse under chapter 261. We note, however, that Exhibit 2 contains a report created by Child Protective Services ("CPS") that was used or developed in an investigation by CPS of alleged child abuse or neglect under chapter 261. Thus, we find that the CPS report, which we have marked, is within the scope of section 261.201. You have not indicated that CPS has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, the department must withhold the CPS report that we have marked in Exhibit 2 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). The remaining information in Exhibit 2, as well as Exhibits 3 and 4, however, is not confidential under section 261.201 of the Family Code and may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information or the requestor knew the

identity of the sexual assault victim, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). You seek to withhold Exhibits 2, 3, and 4 in their entirety because you state they pertain to sexual assault and the requestor knows the identity of the sexual assault victim. We note, however, that the right of privacy lapses at death; thus, information may not be withheld on the basis of the privacy interests of a deceased individual. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 at 1 (1981). In this instance, the sexual assault victim at issue in Exhibits 2, 3, and 4 is deceased. Thus, none of the information in Exhibits 2, 3, and 4 may be withheld under section 552.101 in conjunction with common-law privacy based on the privacy interests of the deceased victim.

We note that, as previously stated, Exhibit 2 contains references to the alleged sexual assault of a child other than the deceased child. You do not state, nor does the submitted information reflect, that the requestor knows the identity of that alleged sexual assault victim. We have marked the information that identifies or tends to identify that alleged sexual assault victim. In addition, an individual's criminal history when compiled by a governmental body may be protected under common-law privacy. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find that some of the remaining information in Exhibit 2 constitutes criminal history information, and there is no legitimate public interest in release of this information. Therefore, the department must withhold the alleged sexual assault victim identifying information and criminal history information we have marked in Exhibit 2 under section 552.101 of the Government Code in conjunction with common-law privacy.

You claim that some of the submitted information is confidential under section 552.130, which excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). Therefore, the department must withhold the Texas motor vehicle record information that we have marked in Exhibit 2 under section 552.130.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and

under section 552.130 of the Government Code. The remaining information must be released.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

¹ We note the information to be released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Leah B. Wingerson

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 309044

Enc. Submitted documents

c: Ms. Cynthia Clements
Project Innocence of Texas
1304 Texas Avenue
Lubbock, Texas 79401
(w/o enclosures)