



RQ-598

Office of the Attorney General

State of Texas
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DAN MORALES
ATTORNEY GENERAL

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Office of the Attorney General
Opinion Committee
7th Floor, Price Daniel Sr. Building
209 West 14th Street
14th & Lavaca
Austin, Texas 78711-2548

RE: Cause No. 93-06436, Melina Alanna Padilla vs. Richard King, et al., In the 250th Judicial District Court, Travis County, Texas.

To Whom It May Concern:

I am writing concerning an open record request received by my client, The University of Texas at Austin on August 5, 1993. I have attached the request for your reference.

This request concerns litigation currently pending in Travis County. Mr. King, Pro Se, and the University are Defendants. Ms. Padilla is the Plaintiff. Please advise as to what portions of the police report must be disclosed. Additionally, must registry information be provided as to both individuals.

First, may that portion of Mr. King's registry information consisting of his home address and home telephone number be disclosed if while employed by the University he executed an "election" to not allow public access to this same information?

Second, this open records request seeks the University of Texas police report in its entirety. This information is relevant to pending litigation. In all likelihood, the police report will be introduced into evidence and will be directly implicated in the University's cross-examination and defense. Under these circumstances, does litigation exemption 3(a)(3) of the Open Records Act exempt this document from disclosure?

Additionally, State Bar Rule 3.07 concerning professional conduct mandates:

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In the course of representing a client, a lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that there will be a substantial likelihood of materially prejudicing an adjudicatory proceeding. A lawyer shall not counsel or assist another person to make such a statement.

Does the State Bar's mandate concerning trial publicity implicate exemption 3(a)(7) of the Open Records Act? I should add that venue in Travis County is mandatory by provisions of the Texas Tort Claims Act and that the case was previously removed from Harris County.

Third, what are the implications of the false light doctrine and the privacy tort of disclosure concerning the release of the University of Texas' police report? Mr. King was accused of sexually assaulting Ms. Padilla. The police report details these allegations. The report concerns the sexuality of both Mr. King and Ms. Padilla and is highly personal in nature. Mr. King was not billed by a Travis County Grand Jury. Additionally, the University, itself, took administrative action against Mr. King. After a disciplinary hearing, at which portions of the police report and other evidence was considered, Mr. King was found not guilty of various charges stemming from the alleged assault. It was the position of the University's hearing officer that the testimony of Ms. Padilla was materially false. Under these circumstances, is the police report exempt from discovery by 3(a)(1) of the Open Records Act and specially by any constitutional or statutory right of privacy in Mr. King or any other identified witness or by judicial decision. Industrial Foundation of the South v. Texas Ind. Accident Board, 540 S.W.2d 668 (Tex. 1976).

With regard to the University's administrative hearing, is the police report exempt from disclosure as a "student record?" The report concerns reports of behavioral patterns and/or disciplinary actions taken by the University against Mr. King, a University at the time of the alleged assault.

Finally, is the police report exempt from disclosure by the law enforcement provision of the Open Records Act 3(a)(8). The statute of limitations concerning sexual assaults is five (5) years. The alleged assault at issue occurred on November 2, 1990. As previously mentioned, Mr. King was not billed by a Grand Jury; however, Ms. Padilla is currently seeking to have the case

reconsidered. As long as the statute of limitations has not run and there is indication that because of the actions of Ms. Padilla and/or others, Mr. King may be subject to criminal prosecution it is the University's concern that disclosure of the police report may hinder their investigative abilities. Under these circumstances is the police enforcement provision of the Open Records Act at issue.

With regard to the UT police report and UT police narrative, you should know the document in its entirety was produced pursuant to a discovery request to the Plaintiff's attorney. The document was not filed with the Court nor has it been released to anyone else since the onset of the litigation.

Finally, the police report contains information identifying non-party UT students. Furthermore, the report contains Ms. Padilla's medical records and sworn statements. The report also contains the witness statement of a UT student who is not a party to this suit, as well as, the results of a polygraph exam. Must these names be redacted or must any of this information be omitted from disclosure.

Please advice me at your earliest convenience concerning this matter. The subject police report is also attached.

Sincerely,



MARIA TERESA GUERRA
Assistant Attorney General
Tort Litigation Division
PO Box 12548, Capitol Station
Austin, TX 78711-2548
(512) 463-2197 Ext. 1655

MTG/cgm

Enclosures

cc: Patricia Ohlendorf, UT
Richard Webb, UT