

Juvenile Law Case Summaries

By
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Identity of victim of aggravated sexual assault who was named in an offense report is excepted from open records disclosure by common law privacy principles [OR2001-1430] (01-3-30).

On April 10, 2001, the Attorney General ruled that the identify of a victim of an aggravated sexual assault who was named in an offense report is excepted from disclosure under the open records act by principles of common law privacy.

01-3-30. Attorney General Open Record Opinion No. OR2001-1430, 2001 WL 948917, 2001 Tex.Ag.Lexis ____ (4/10/01)[Texas Juvenile Law (5th Edition 2000)].

Mr. Steven D. Monte
Assistant City Attorney
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

Dear Mr. Monte:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 145836.

The Dallas Police Department (the "department") received a request for many specified incident reports. You have released all but report numbers 0930708-E and 0972990-F. You argue all victim identifying information found in offense report number 0930708-E is excepted under 552.101 of the Government Code because it pertains to an aggravated sexual assault. In addition, you argue offense report number 0972990-F is excepted in its entirety under section 58.007 of the Family Code because the suspect is a juvenile. We have considered the exceptions you claim and reviewed the submitted information.

Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

In this case, this office did not receive the request for a decision within the 10 business day period mandated by section 552.301(a). Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302; see *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 information, a governmental body must

provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); see Open Records Decision No. 630 (1994). The presumption of openness can be overcome by a compelling demonstration that the information is made confidential by another source of law or affects third party interests. Open Records Decision No. 150 (1977). You argue that the information is confidential under section 58.007 of the Family Code and common law privacy.

With regard to the aggravated sexual assault, report number 0930708-E, section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Under section 552.101, information may be withheld on the basis of common law privacy. The doctrine of 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 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 a sexual assault victim has a common law privacy interest which prevents disclosure of information that would identify the victim. 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). Accordingly, we have marked the sexual assault victim's identifying information that you must withhold pursuant to common law privacy. You must release the remainder of the offense report.

With regard to the aggravated assault by a juvenile, report number 0972990-F, section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

The information at issue involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, the requested information is confidential pursuant to section 58.007(c) of the Family Code. You must withhold the information from disclosure under section 552.101 of the Government Code.

[Balance of letter dealing with disclosure and appeal procedures is omitted.]

Sincerely,

Yen-Ha Le
Assistant Attorney General
Open Records Division

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