



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 27, 1994

Mr. Matthew Masek
Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR94-041

Dear Mr. Masek:

The constable of Harris County Precinct No. 4 received a request for reports of all sexual assaults and aggravated sexual assaults that occurred in 1992 and year-to-date 1993. You say the constable does not maintain written offense reports. Rather, the information is maintained only on computer databases. You ask whether the constable may require payment prior to the preparation of the records. Your correspondence with this office has been assigned file number 23328.

Section 552.263 of the Open Records Act permits a governmental body to require prepayment of the costs for preparation of public records if "the preparation of a public record would be unduly costly and its reproduction would cause undue hardship to the department or agency if the costs were not paid." Gov't Code § 552.263. You say you have received verbal approval from the General Services Commission for the estimated cost of approximately \$200.00 for preparing the requested information. See Gov't Code § 552.262; 1 T.A.C. § 111.63. Thus, the constable may require the requestor to pay the \$200.00 as a condition precedent to the preparation of the information if that amount is "unduly costly" to the constable and if the constable's office would experience "undue hardship" if the \$200.00 were not paid.¹ See Attorney General Opinion JM-672 (1987); *Industrial Found. of the S. v. Texas Indust. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

¹Whether the constable's office would experience "undue hardship" if the \$200.00 were not paid and whether \$200.00 is "unduly costly" to the constable's office is a question of fact. This office cannot resolve questions of fact. Open Records Decision No. 426 (1985).

You stated in your letter of November 18, 1993, that you are not requesting a decision as to whether information should be excepted from disclosure, but that you were asking the requestor to clarify her request. In your subsequent letter, dated December 3, 1993, you indicate that the requestor clarified the request and ask about the prepayment for costs provision. However, you do not ask for a decision about whether the requested information is excepted from required public disclosure.

When a governmental body fails to make a request for an open records decision within ten days after the date of receiving a written request for information, the requested information is presumed to be public information. Gov't Code § 552.302. Only a compelling demonstration can overcome that presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

The protection of the privacy interest of a third party is a compelling reason which overcomes the presumption. Open Records Decision Nos. 473 (1987); 71 (1975). The requestor has clarified that she seeks certain reports of sexual assault and aggravated sexual assault. The common-law right to privacy protects the names of victims of sexual assault and aggravated assault contained in the records of a law enforcement agency. *See Open Records Decision No. 339 (1982)*. *But see Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992) (holding that the court could not prohibit a newspaper from publishing facts relating to a victim's identity where the rape victim had consented to the disclosure of her name during the public criminal trial).

Apparently, the requested information has not been prepared; thus, this office cannot review it. Nevertheless, once the information has been prepared, the constable must not release the names of victims or any facts relating to the victim's identity.² All other information is presumed to be public information, since you did not request an attorney general determination as provided by section 552.301(a) of the Open Records Act. Gov't Code § 552.302.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

²We assume that the names of the victims do not appear in court records. *See Code Crim. Proc. art. 57.02(f)*. If a name does so appear, the name must be released. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992).

KHG/rho

Ref.: ID# 23328
ID# 23570

cc: Ms. Dianna Hunt
Reporter
Houston Chronicle
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