



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 29, 1995

Ms. Lan P. Nguyen  
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City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR95-1610

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30492.

The Houston Police Department (the "department") received an open records request for the

[v]ideotaped confession (made on or about 3/28/92) by James Edward Bergstrom as made to Sgt. Wiederhold and Sgt. Gallier. In this video, Bergstrom related to the Sgts. the events that led to his involvement in numerous sexual assaults and attempted sexual assault cases in the SE Houston Area.

The individual requesting the videotape is an attorney representing one of the victims of the confessed sexual assaults in a related civil lawsuit she has filed against Bergstrom. You contend that because the taped confession contains references to the names and addresses of several victims of sexual offenses, as well as facts surrounding many of the sexual assaults, the videotape must be withheld in its entirety under common-law privacy as incorporated into section 552.101 of the Government Code.

Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including the common-law right to privacy. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668

(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.

Clearly, information pertaining to an incident of sexual assault raises an issue of common-law privacy. Open Records Decision No. 339 (1982). In Open Records Decision No. 339 (1982), this office concluded that "a detailed description of an incident of aggravated sexual abuse raises an issue of common law privacy" and therefore any information tending to identify the assault victim should be withheld pursuant to common-law privacy. For similar reasons, in Open Records Decision No. 393 (1983) this office held that because a police report consisted almost entirely of information tending to identify the victim of a sexual assault, the entire report was protected. However, neither of these open records decisions held for the proposition that all police records concerning investigations of sexual assaults were *per se* protected in their entirety by common-law privacy.

We have reviewed the video tape recording, most of which we found to be inaudible. However, it is clear to this office that large portions of the videotape do not pertain to the assaults of specific individuals, but rather consist of general discussions of the assailant's *modus operandi*. Because these portions of the videotape do not implicate any particular individual's privacy interests, the department must release all portions of the videotape that contain this type of information. Further, because you have raised none of the act's other exceptions with regard to the videotape, the requestor, acting as an authorized representative of one of the assault victims, has a special right of access to all information that implicates his client's privacy interests.<sup>1</sup> See Gov't Code § 552.023. On the other hand, to the extent that the department is able to determine that information contained in the videotape reveals or tends to reveal the identities of other victims or consists of sexually explicit descriptions of other specific assaults, the department must withhold that information from the requestor in accordance with Open Records Decision Nos. 393 (1983) and 339 (1982).<sup>2</sup>

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<sup>1</sup>The fact that the requestor's client has brought suit against her assailant in connection with the sexual assault brings into serious question whether the victim has waived any right of privacy she may have otherwise had in the information. However, because we resolve the issue of her right to this information on other grounds, we need not decide this issue at this time.

<sup>2</sup>*But see Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (court cannot prevent a newspaper from publishing the identity of a victim of sexual assault when lawfully obtained from the public record). In this instance, we have no information to indicate that the other victims' identities have been previously released in a public court record. To the extent that such information is included in public court records, the department may not now withhold that information from public disclosure on the basis of common-law privacy.

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 under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/RWP/rho

Ref.: ID# 30492

Enclosure: Videotape

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