



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 18, 1996

Ms. Janet M. Dill
Assistant City Attorney
Office of the City Attorney
City Hall
Dallas, Texas 75201

OR96-0055

Dear Ms. Dill:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 38018.

On December 13, 1995, the Dallas Police Department received an open records request for the "full police report and photographs and supplement [for] service number 0198149-D," a case involving the sexual assault of a juvenile. On December 29, 1995, the City of Dallas (the "city") asked this office to render an open records decision on whether the city may withhold from required public disclosure the requested information, or portions thereof, pursuant to sections 552.101 and 552.103(b) of the Government Code.

Section 552.301(a) of the Government Code provides that:

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. 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 calendar day after the date of receiving the request. (Emphasis added).

Since the city received the request on December 13, 1995, and requested a decision from this office on December 29, 1995, the city failed to seek our decision within the 10-day period mandated by section 552.301(a). Because the city did not request an attorney general decision within the deadline provided by section 552.301(a), the requested information is presumed to be public information. Gov't Code § 552.301; *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. *Hancock*, 797 S.W.2d at 381. When an exception to disclosure that is designed to protect the interests of a third party is applicable, the presumption of openness may be overcome. *See* Open Records Decision No. 552. (1990).

You inform us that the city has released to the requestor the front page of the police report with the exception of the identity of the crime victim. You assert that section 552.103(b) excepts from required public disclosure all of the requested information.

Section 552.103 of the Government Code, the litigation exception, protects a governmental body's litigation interests by excepting from required public disclosure information that relates to pending or reasonably anticipated litigation to which the state or a political subdivision is or may be a party. The exception benefits the governmental body rather than any third party. The fact that information may fall within the section 552.103 exception does not alone constitute a compelling reason sufficient to overcome the presumption of openness that arises when a governmental body fails to request an attorney general decision with 10 days of receiving an open records request. *See* Open Records Decision No. 591 (1991) at 2, n.2. Consequently, the city may not withhold the requested information from required public disclosure based on section 552.103 of the Government Code.

You also assert the privacy interests of the sexual assault victim. The identity of juvenile victims of serious sexual offenses is protected from required public disclosure on the basis of the common-law right to privacy. *See* Open Records Decision Nos. 628 (1994), 339 (1982). The victim's common-law right to privacy is a compelling interest that overcomes the presumption that the information is public. Section 552.101 of the Government Code, which excepts from disclosure information that is confidential by law, applies to information made confidential by the common-law right to privacy.¹ Thus, the

¹*Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

city must withhold from required public disclosure all information that identifies the sexual assault victim pursuant to section 552.101 of the Government Code. This includes the victim's name and address, the victim's relative's name and address and all photographs of the victim.

We are resolving this matter with this 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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Records Division

KHG/ch

Ref.: ID# 38018

Enclosures: Submitted documents

cc: Mr. Robert E. Klein
9319 LBJ Freeway, Suite 203
Dallas, Texas 75201
(w/o enclosures)