



Office of the Attorney General

State of Texas

September 20, 1996

DAN MORALES
ATTORNEY GENERAL

Ms. Marlene M. Menard
Assistant City Attorney
City of Dallas
Municipal Building
Dallas, Texas 75201

OR96-1719

Dear Ms. Menard:

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# 100832.

The City of Dallas (the "city") received a request for information from Ms. Tina Cosse on June 3, 1996. Specifically, the requestor, acting on behalf of an attorney who is representing a victim of a sexual assault, has made an open records request for the Dallas Police Department's records concerning its investigation of the assault. You state that the city has released to the requestor many of the requested records. You seek to withhold pursuant to section 552.108 of the Government Code other records coming within the ambit of the request because "the criminal case arising from the aggravated sexual assault of the law firm's client is still under active investigation." You did not request an open records decision from this office until July 1, 1996. Consequently, you failed to request a decision within the ten days required by section 552.301(a) of the Government Code.

Section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. See *Hancock*, at 381. The presumption arising with the ten-day rule can be overcome only by a compelling demonstration that the information should not be released, e.g., where the information is made confidential by other law, or where third party interests are at issue. Open Records Decision No. 150 (1977).

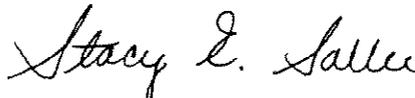
In this instance, you have not presented this office with a compelling demonstration as to why the requested information should be withheld pursuant to section 552.108. We therefore deem this exception to required public disclosure as being waived. We note, however, that some of the information at issue must be withheld from public disclosure pursuant to 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. *See also* Open Records Decision No. 393 (1983). Although the victim of the sexual assault has a special right of access to all of the records at issue that pertain solely to herself, *see* Gov't Code § 552.023, any information tending to identify the other sexual assault victims found in the records at issue must be withheld pursuant to section 552.101.

You have not shown compelling reasons why the remaining information at issue should not be released. In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. *See also* Gov't Code § 552.352 (distribution of confidential information is criminal offense).

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,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/RWP/ch

Ref: ID# 100832

Enclosures: Submitted documents

cc: Ms. Tina Cosse
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(w/o enclosures)