



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 29, 1998

Ms. Heather Silver
Assistant City Attorney
Office of the City Attorney
Criminal Law and Police Division
City of Dallas
Municipal Building
Dallas, Texas 75201

OR98-1359

Dear Ms. Silver:

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# 115556.

The Dallas Police Department (the "department") received a request for 26 offense reports referenced, in part, by their description of offense and service report numbers. The department received the request for information on January 12, 1998. This office received your request for an open records ruling on the requested information on March 12, 1998. 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 business day after the date of receiving the request.* For purposes of this subchapter, a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission. (Emphasis added).

Since this office did not receive the department's request for a decision within the 10-day period, the department failed to seek our decision within the 10-day period mandated by section 552.301(a). Because the department 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 § 552.302; 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. *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 raise section 552.101 of the Government Code and have submitted for our review a representative sample of department reports involving the offense of sexual assault.¹ You have shown a compelling reason for withholding from the public only a certain portion of the requested information, which is made confidential by common-law privacy. Information is excepted from required public disclosure by a common-law right of privacy under section 552.101 if the information (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *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 sexual assault victims have a common-law privacy interest which prevents disclosure of information that would identify them. 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). Consequently, information tending to identify victims of serious sexual offenses and detailed descriptions of these offenses must be withheld from public disclosure pursuant to section 552.101 because such information is protected by common-law privacy.² See Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). But see *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992) (disclosure of sexual assault victim's name during public trial made information public). The department must release the remaining information to the requestor.

¹We note that the requestor states that some of the requested reports do not involve the offense of sexual assault. In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²We note that in cases where a pseudonym is used, the pseudonym is not protected by 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/ulg

Ref.: ID# 115556

Enclosures: Submitted documents

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(w/o enclosures)