



July 12, 1999

Mr. Saul Pedregon
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR99-1917

Dear Mr. Pedregon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125611.

The Dallas Police Department (the "department") received a written request for certain offense reports on January 20, 1999. You requested a decision from this office on April 12, 1999. Consequently, you failed to request a decision within the ten business 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 business days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to timely request a decision from this office, 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 Publ'g 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.

You contend that four of the requested offense reports are excepted from required public disclosure pursuant to sections 552.101 and 552.108 of the Government Code. You have not shown compelling reasons why the information at issue should be withheld pursuant to section 552.108; we, therefore, deem this particular exception as being waived. On the other hand, because section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," we will consider the applicability of section 552.101 to the information at issue. *See* Gov't Code § 552.352 (release of confidential information to public constitutes criminal offense).

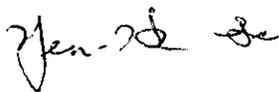
Section 552.101 protects information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

You seek to withhold portions of four offense reports pursuant to common-law privacy because the reports pertain to sexual assault investigations. 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. 393 (1983), this office concluded that information which identifies or would tend to identify a victim of a serious sexual offense may be withheld under common law privacy. *But see* Gov't Code § 552.023 (information protected solely by privacy may not be withheld from individual to whom information pertains or from that person's "authorized representative").

We have marked the information that reveals the identities of the assault victims that must be withheld from the public on privacy grounds.¹ You have not shown compelling reasons why the remaining information at issue should not be released. The department must release the remaining information to the requestor.

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

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/RWP/eaf

Ref.: ID# 125611

¹You have not explained, nor is it apparent to this office, why the witnesses in these cases would have a privacy interest in having their names withheld from the public.

Encl. Marked documents

cc: Mr. Karim H. Vellani, CPO
 Threat Analysis Group
 1043 White Sand Road
 Katy, Texas 77450
 (w/o enclosures)