



September 28, 1999

Mr. Steven D. Monte'  
Assistant City Attorney  
Office of the City Attorney  
City Hall  
Dallas, Texas 75201

OR99-2733

Dear Mr. Monte':

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128977.

The Dallas Police Department received a request for "a complete narrative and supplements on service number 110528H." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including 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. In *Industrial Foundation*, the Texas Supreme Court held that information that relates to, among other things, sexual assault is intimate and embarrassing and is generally of no legitimate public interest. *Id.* at 683; *see also* Open Records Decision Nos. 393 (1983), 339 (1982).

Therefore, ordinarily, you would be required to withhold information that identifies the victim of sexual assault under section 552.101 in conjunction with the common-law right to privacy. However, it appears that in this case the requestor is the sexual assault victim's attorney, and therefore, has a special right of access to front page offense report information

that identifies this victim. *See* Gov't Code § 552.023.<sup>1</sup> Therefore, you must release all of the front page offense report information to this requestor. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976)

However, the submitted information includes criminal history record information ("CHRI"). Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history record information generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Please note, however, that driving record information is not confidential under chapter 411, *see* Gov't Code § 411.082(2)(B), and must be disclosed. We have marked information excepted from required public disclosure by section 552.101 of the Government Code.

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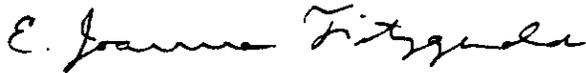
<sup>1</sup>Section 552.023 provides in pertinent part:

(a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.

(b) A governmental body may not deny access to information to the person, *or the person's representative*, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.

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,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF\nc

Ref: ID# 128977

Encl: Submitted documents

cc: Ms. Beth Janicek  
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(w/o enclosures)