



January 12, 2000

Mr. Steven D. Monté
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
501 Police & Courts Building
Dallas, Texas 75201

OR2000-0120

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID#131057.

The Dallas Police Department (the "department") received a request for a police report relating to a specific sexual assault. 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 have reviewed the submitted information.

The Act imposes a duty on governmental bodies seeking an open records decision to submit a request for a decision to the attorney general within ten business days after the governmental body received the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *Id.*; *see, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

You acknowledge that you did not request a decision within ten business days and thus failed to meet your statutory burden. Gov't Code § 552.301. Thus, the requested information is presumed public. In the absence of a demonstration that the requested 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. Open Records Decision No. 195 (1978); *see also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense).

You claim that the information is protected by common law privacy under section 552.101. The privacy interest of a third party overcomes the presumption that the requested information is public. Open Records Decision No. 552 at 1 (1990). Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The doctrine of 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 the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We find that the requested information is confidential under section 552.101 of the Government Code in conjunction with common law privacy. Accordingly, the department must withhold the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report

that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/KSK/ljp

Ref: ID# 131057

Encl. Submitted documents

cc: Mr. Lenny McEmhan
2107 Berkner
Richardson, Texas 75081
(w/o enclosures)