



April 3, 2000

Mr. Steven D. Monté
Assistant City Attorney
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR2000-1279

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#134247.

The City of Dallas (the "city") received a request for all offense reports and 911 sheets for a particular address. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and have reviewed the submitted sample of information.¹

Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth business day after the date of receiving the written request. 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.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex.

¹We 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.

App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Here, we agree that the application of section 552.101 and the interests of third parties present compelling reasons to overcome the presumption of openness.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Juvenile offender records held by law enforcement agencies are now expressly confidential under section 58.007(c) of the Family Code. The relevant language of amended Family Code section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Section 58.007(c) of the Family Code only applies to juvenile law enforcement records concerning juvenile conduct occurring on or after September 1, 1997, that are maintained by law enforcement agencies. Here, two of the submitted offense reports involve juvenile conduct that occurred after September 1, 1997. Thus, these records are made confidential by amended section 58.007 of the Family Code. Accordingly, you must withhold offense report numbers 0603951-H and 0647400-H pertaining to juvenile suspects pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 of the Government Code also excepts from disclosure information protected by common law privacy. 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). This office has found that, in general, section 552.101 does not except from public disclosure the names of crime victims. *See* Open Records Decision No. 409 at 2 (1984). However, we

have concluded that the names of victims of sexual assault and child victims of sexual abuse and serious sexual offenses are excepted from public disclosure under section 552.101 and common law privacy grounds. *See* Open Records Decision No. 339 at 2 (1982). In the instant case, the remaining offense report pertains to a sexual assault. We believe that the requirements of common law privacy may be satisfied by redacting, prior to release, identifying information such as the victim's name, work information, the names of others such as family members through whom the victim could be identified, the victims' and such other individuals' addresses and telephone numbers, and the locations of the crimes if they coincide with the victims' addresses or otherwise tend to specifically identify the victim. Here, you must withhold the victim's name, address, telephone number, and work information in offense report number 0685699-H under common law privacy as encompassed by section 552.101. The remaining information in offense report number 0685699-H must be released.

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).

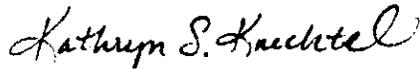
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Department 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,



Kathryn S. Knechtel
Assistant Attorney General
Open Records Division

KSK/ljp

Ref: ID# 134247

Encl. Submitted documents

cc: Mr. LaDarrin Davis
7401 Samuell Drive
Dallas, Texas 75228
(w/o enclosures)