



January 22, 2001

Mr. Charles M. Allen, II  
Richardson Police Department  
P.O. Box 831078  
Richardson, Texas 75083-1078

OR2001-0221

Dear Mr. Allen:

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# 143411.

The City of Richardson Police Department (the "department") received a request for information regarding a sexual assault investigation. You have submitted for our review as responsive to the request offense/incident report number 00-057368. You assert that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

In relevant part, section 552.108 provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(2). You state that the release of the submitted documents "would interfere with the detection, investigation, or prosecution of crime." However, you do not explain how release of any of the information would interfere with law enforcement. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); see also *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) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). You also state that the matter "has not resulted in a conviction or deferred adjudication." This statement implies that the case may remain active, but you do not otherwise inform this office of the status of the case. Subsections 552.108(a)(2) and (b)(2), by their express language as quoted above, pertain to information that *did not result* in a conviction or deferred adjudication. These subsections therefore apply only where the matter has reached a *final result* other than conviction or deferred adjudication. Based on the limited information you have provided, we cannot assume that the case remains active, nor can we assume that the matter has reached a final result other than conviction or deferred adjudication. In summary, you have not demonstrated which subsections under section 552.108, if any, apply in this instance and we therefore conclude that none of the information is excepted under section 552.108.

However, we advise that the information may nevertheless be subject to required withholding under section 552.101 of the Act in conjunction with the common law right to privacy. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Common law privacy protects information if (1) the information 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, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that the identity of the victim of an alleged sexual assault is among the types of information protected under the common law right to privacy. Open Records Decision No. 339 (1982). Where

the identity of the victim is known to the requestor, the common law right to privacy may apply to information beyond that which merely identifies the victim. *Id.* In the present case, we believe that the entirety of the information must be withheld from a member of the general public who already knows the identity of the victim.

We also note, however, that section 552.023 of the Act provides that “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.” The present requestor is an attorney who indicates her client is a relative of the victim. We are unable to ascertain from the information provided whether the requestor or her client is an authorized representative of the victim. If so, section 552.023 provides that the submitted information is subject to release to the requestor in its entirety. If neither the requestor nor her client is an authorized representative of the victim, we find that the department must withhold the information in its entirety pursuant to section 552.101 in conjunction with the common law right to privacy.

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).

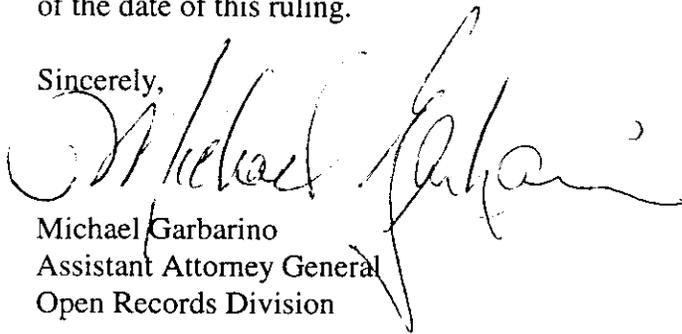
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,

A handwritten signature in cursive script, appearing to read "Michael Garbarino".

Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/seg

Ref: ID# 143411

Encl. Submitted documents

cc: Mr. Greg Thomas  
Thomas & Neilon, P.C.  
P.O. Box 50766  
Dallas, Texas 75250  
(w/o enclosures)