



March 6, 2001

Mr. Charles M. Allen, II  
City of Richardson  
P.O. Box 830309  
Richardson, Texas 75083-0309

OR2001-0862

Dear Mr. Allen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144753.

The Richardson Police Department (the "department") received a written request from an attorney representing an individual who allegedly was the victim of a sexual assault. The requestor states:

I have enclosed a subpoena directed to Elizabeth Baker, and our check for \$5.00. Please send us the documents described in the subpoena.

You have submitted to this office as responsive to the request the records pertaining to Service Number 00-10382, including a videotaped interview of the criminal suspect, and contend that these records are excepted from disclosure under section 552.108 of the Government Code. You did not, however, submit to this office a copy of the referenced "subpoena." We additionally note that the written request you submitted to this office does not otherwise describe the information sought by the requestor. Without a copy of the written request, this office has no knowledge of what information has actually been requested. *See Open Records Decision No. 150 (1977)*. Consequently, this office has no basis on which to conclude that the department records you have submitted to this office are in fact the responsive, and the only responsive, records to the request.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow when it seeks a decision from the attorney general as to whether requested

information falls within an exception to disclosure. Among other requirements, the governmental body must submit to this office "a copy of the written request for information." Gov't Code § 552.301(e)(1)(B). Otherwise, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302. Because the requestor's letter that you submitted to this office does not describe the requested information, and because you did not submit for our review a copy of the "subpoena" that does describe the requested information, we conclude that you did not comply with the requirements of section 552.301(e)(1)(B) and that the requested information is now presumed to be public and must be released to the requestor in its entirety, with the following exceptions.<sup>1</sup>

Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 at 1 (1982), we will raise section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Gov't Code § 552.352. The applicability of section 552.101 constitutes a compelling reason for withholding information.

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. Clearly, information pertaining to an incident of sexual assault raises an issue of common law privacy. In Open Records Decision No. 339 (1982), this office concluded that "a detailed description of an incident of aggravated sexual abuse raises an issue of common law privacy" and therefore any information tending to identify the assault victim must be withheld pursuant to common law privacy. *See also* Open Records Decision No. 393 (1983).

However, the requestor, in acting on behalf of his client, has a special right of access to information about his client that would otherwise be excepted from public disclosure. *See* Gov't Code § 552.023. Consequently, no identifying information concerning the requestor's client may be withheld in this instance. However, the records at issue reveal the identity of another assault victim that we believe must be withheld from the requestor on privacy grounds. We have marked this information accordingly.

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<sup>1</sup>The information discussed below relates only to the documents you submitted to this office pertaining to Service Number 00-10382. Any other information coming within the ambit of the request must be released in its entirety.

The records at issue also reveal the driver's license numbers of several individuals. Section 552.130(a)(1) of the Government Code requires the department to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Accordingly, the department must withhold the Texas driver's license numbers of all individuals other than the requestor's client pursuant to section 552.130(a)(1) of the Government Code.<sup>2</sup>

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).

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<sup>2</sup>As with information protected by common law privacy, the requestor has a special right of access to his client's driver's license and social security number pursuant to section 552.023 of the Government Code.

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,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/RWP/seg

Ref: ID# 144753

Encl. Submitted documents & videotape

cc: Mr. David M. Vereeke, P.C.  
1700 Commerce Street, Suite 1750  
Dallas, Texas 75201  
(w/o enclosures)