



June 1, 2001

Mr. Steven D. Monté
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR2001-2265

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# 147927.

The Dallas Police Department (the "department") received a request for the following information pertaining to 2610 Elm Street:

1. City-wide crime summary average for 2000 and for the period from January 2001 to the most recent date available.
2. Crime summaries for 2000 and the period from January 2001 to the most recent date available for the reporting area or police beat, which encompasses 2610 Elm Street.
3. Police calls for service at 2610 Elm Street for 2000 and for the period from January 2001 to the most recent date available.
4. Offense/incident and/or arrest reports regarding conduct at 2610 Elm Street for 2000 and for the period from January 2001 to the most recent date available.
5. Texas Alcoholic Beverage Commission offense reports regarding conduct at 2610 Elm Street for 2000 and for the period from January 2001 to the most recent date available.

6. Any documents regarding or related to the factual basis for the decision of the City of Dallas to deny the application of Kenny Weinmeister for a late hours dance hall license for the premises located at 2610 Elm Street and known as The Wall.

You inform us that you released all information except one offense report, which pertains to an aggravated sexual assault. You assert that the complainant's identifying 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.

The Public Information Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. Gov't Code § 552.301(e). The time limitations found in section 552.301 are 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. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that the information is made confidential by another source of law or affects third party interests).

The department provided this office with a statement indicating that the request for public information was received by the department on March 12, 2001. You did not seek a decision from this office until March 29, 2001, more than ten business days from the date the department received the request for information. Consequently, you have not met your statutory burden. Gov't Code § 552.301. The requested information is therefore presumed public. However, you assert that the requested information is excepted from required disclosure pursuant to section 552.101 of the Government Code. The applicability of section 552.101 to the submitted information provides a compelling reason which will overcome the presumption that the information is public. Therefore, we will address your arguments under this exception.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Under section 552.101, information may be withheld on the basis of 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). In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common law privacy interest which prevents disclosure of information that would identify the victim. See also *Morales v. Ellen*,

840 S.W.2d 519 (Tex. App.--El Paso 1992, *writ denied*) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Accordingly, we have marked the identifying information of the sexual assault victim that you must withhold pursuant to common law privacy. See Open Records Decision Nos. 393 (1983), 339 (1982). Except for the license plate numbers discussed below, you must release the rest of the information.

We note that the submitted information contains confidential information that the department must withhold. Section 552.130 excepts information that relates to a motor vehicle title or registration issued by an agency of this state. You must withhold the license plate numbers under section 552.130.

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,



Polly McCann Pruneda
Assistant Attorney General
Open Records Division

PMP/sk

Ref: ID# 147927

Enc: Marked documents

c: Roger Albright
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(w/o enclosures)