



October 16, 2001

Ms. Tenley A. Aldredge
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2001-4676

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153418.

The Travis County Sheriff's Office (the "county") received a request for "any information" on a case involving two individuals named by the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common law right to privacy. We have considered the exception you claim and reviewed the submitted information.

At the outset, as you acknowledge, we note that the county did not timely comply with the deadlines in section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b) (ten business days), (d) (same), (e) (fifteen business days). Accordingly, the 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. This office has long held that a compelling reason sufficient to overcome the section 552.302 presumption of openness may be demonstrated where information is made confidential by law or its release affects third party interests. *See, e.g.*, Open Records Decision No. 150 (1977). Therefore, we address the section 552.101 assertion.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision[,]" and thus encompasses the common law right to privacy. 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). In instances where the identity of the victim is already known, this office has stated that the common law right to privacy may apply to information beyond that which merely identifies the victim. *Id.* In the present instance, we believe that the entirety of the responsive information submitted for our review must be withheld under section 552.101 in conjunction with the victim's 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,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 153418

Enc. Submitted documents

c: Ms. Suzette Smith
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(w/o enclosures)