



February 12, 2002

Mr. Steven D. Monté
Assistant City Attorney
City of Dallas
2014 Main Street, Room 501
Dallas, Texas 75201

OR2002-0655

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# 158523.

The City of Dallas Police Department (the "department") received a request for copies of documents related to a specified department internal affairs investigation. You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, we note that section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request. *See Gov't Code § 552.301(b)*. The information indicates that the department received the requestor's written request for information on November 15, 2001. However, the department did not request a decision from our office concerning the requested information until December 4, 2001, more than ten business days after the date that the department received the written request. Accordingly, we conclude that the department failed to comply with the procedural requirements of section 552.301 of the Government Code. *See Gov't Code § 552.301(b)*. Although the information is, thus, presumed public, we will address the department's claims that it is excepted from disclosure under section 552.101 of the Government Code. *See Gov't Code 552.302; see also Open Records Decision No. 150 at 2 (1977) (finding that compelling interest in overcoming presumption*

that information is public is demonstration that some other source of law makes information confidential or that third party interests are at stake).

We note that in Open Records Letter No. 2001-2538 (2001) we ruled that portions of the submitted documents were excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The requestor is one of the individuals whose privacy interests was implicated in the previous ruling. Accordingly, in this instance, the requestor has a special right of access to much of the information that was withheld from disclosure in Open Records Letter No. 2001-2538 (2001). See Gov't Code § 552.023 (providing that individual has limited special right of access to information when only basis for excepting information from disclosure involves protection of same individual's privacy interest); *see also* Open Records Decision No. 481 (1987). Consequently, this ruling only addresses the common-law privacy interests of persons other than the requestor.

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information protected by the common-law right to privacy. Information is protected from disclosure under the common-law right to privacy 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. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. Based on our review of your arguments and the information, we conclude that some portions of the information, which we have marked, are confidential under the common-law right to privacy and, thus, must be withheld from disclosure pursuant to section 552.101 of the Government Code. *See* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in having access to information concerning performances of governmental employees), 444 (1986) (employee information about qualifications, disciplinary action and background not protected by privacy), 423 at 2 (1984) (scope of public employee privacy is narrow).

We note that other portions of the information may be excepted from disclosure pursuant to section 552.117(1) of the Government Code. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Consequently, the department may only withhold the marked information from disclosure under section 552.117, if the subject employee made a request for confidentiality under section 552.024 prior to the date on which the request for information was received by the

department. The department may not withhold the marked section 552.117(1) information from disclosure if the subject employee did not make a timely election to keep this information confidential. *See* Open Records Decision No. 530 at 5 (1989) (stating whether particular piece of information is protected by section 552.117 must be determined at time request for it is made).

In summary, the department must withhold from disclosure the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The department may only withhold the marked information from disclosure under section 552.117 if the subject employee made a request for confidentiality under section 552.024 prior to the date on which the request for information was received by the department. The department may not withhold the marked section 552.117(1) information from disclosure if the subject employee did not make a timely election to keep this information confidential. The department must release the remaining information to the requestor.

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).

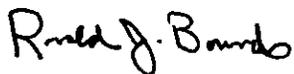
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 158523

Enc. Marked documents

cc: Mr. Alfredo Saldana
1821 Taylor Street
Cedar Hill, Texas 75104
(w/o enclosures)