OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

July 25, 2002

Mr. Steven D. Monté
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
2014 Main Street, Room 501
Dallas, Texas 75201

OR2002-4078

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# 166171.

The Dallas Police Department (the "department") received a request for the entire investigative file for a specified case. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. The requestor has submitted arguments regarding why the information should be released. *See* Gov't Code § 552.304 (permitting member of the public to submit to attorney general reasons why requested information should or should not be released). We have considered the exception you claim and the arguments of the requestor, and have reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common-law 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Generally, information identifying a victim of sexual assault is confidential under section 552.101 in conjunction with the common-law right of privacy. *See id.* at 683-85; Open Records Decision No. 393 (1983). However, when an individual voluntarily discloses otherwise private facts in a public forum, the individual

waives her privacy interest in that information. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 58 (Tex. 1992); *see also Indus. Found.*, 540 S.W.2d at 685.

You state that the requestor knows the identity of the complainant from various court documents relating to her pending lawsuit. The requestor has submitted a copy of several pleadings filed in the lawsuit, which state the complainant's full name numerous times, disclosing the fact that she is an alleged victim of sexual assault along with details about the alleged assault. Based on this information, we find that the complainant's identity as an alleged victim of sexual assault is not protected under common-law privacy. *See Star-Telegram,* 834 S.W.2d at 58 (trial court may not prohibit newspaper from disclosing victim's true identity when information was obtained from public record). Furthermore, we find that the complainant has waived her privacy interest in the details of the alleged sexual assault. Therefore, the department must release the report in its entirety.

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).

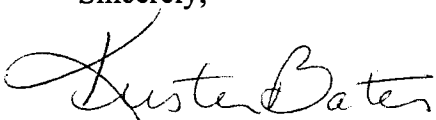
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 166171

Enc. Submitted documents

c: Mr. Bernard A. Guerrini, P.C.
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(w/o enclosures)