



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 6, 2003

Ms. Eugenia A. Cano
City Attorney
City of Alvin
216 West Sealy
Alvin, Texas 77511

OR2003-0791

Dear Ms. Cano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176144.

The Alvin Police Department (the "department") received a request for information relating to a specified case number, including certain witness statements and a transcription of the victim's statement. You state that the department has no information that is responsive to items 1.H, 1.I, I.K, 1.L, or 1.N – 1.S or item 2 of this request. Chapter 552 of the Government Code does not require the department to release information that did not exist when it received this request or to create responsive information. *See* Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). You claim that the rest of the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ This exception encompasses the common-law right to privacy. Common-law privacy protects private facts about an individual. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly

¹Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, as chapter 552 of the Government Code makes the release of confidential information a criminal offense. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 325 (1982).

objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *Id.* at 685. In Open Records Decision No. 393 (1983), this office concluded that although generally only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld from disclosure under common-law privacy, the governmental body was required to withhold the entire police report because the identifying information was inextricably intertwined with other releasable information. *See* Open Records Decision No 393 at 2 (1983); *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 legitimate interest in such information); Open Records Decision Nos. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld), 339 (1982) (information that would identify victim of aggravated sexual abuse must be withheld).

In this instance, the requested information relates to an alleged sexual assault, and the requestor knows the name of the victim. Under these circumstances, the release of information relating to the alleged sexual assault would invade the victim's privacy. Accordingly, we conclude that the department must withhold all of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. As we are able to make this determination, we need not address your claim under section 552.103.

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

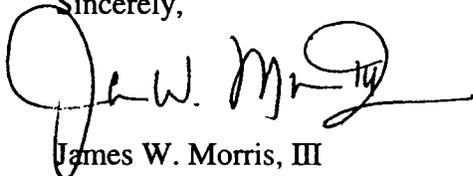
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 176144

Enc: Submitted documents

c: Ms. Norma L. Holley
11222 Pandora
Houston, Texas 77013
(w/o enclosures)