



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

April 10, 2003

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P. O. Box 4087  
Austin, Texas 78773-0001

OR2003-2420

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179173.

The Texas Department of Public Safety (the "department") received a request for specified files. The requestor also asks the department several questions in her request. We note that the Public Information Act (the "Act") does not require a governmental body to prepare answers to questions posed by a requestor or to perform legal research. *See* Open Records Decision Nos. 563 at 8 (1990) (considering request for federal and state laws and regulations), 555 at 1-2 (1990) (considering request for answers to fact questions). You state that the department is prepared to release some responsive information to the requestor. You claim, however, that portions of the requested information are 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.

You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 in conjunction with section 1703.306 of the Occupations Code.<sup>1</sup> Pursuant to section 1703.306, information acquired from a polygraph examination may not be disclosed, unless it falls into one of that section's narrow exceptions. Section 1703.306 provides in part:

- (a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of

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<sup>1</sup> 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 that is protected from disclosure by other statutes.

the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

Occ. Code, § 1703.306. Based on our review of the information at issue, it does not appear that any of the exceptions in section 1703.306 apply in this instance. Accordingly, we conclude that the department must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

You also claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy. Section 552.101 also encompasses information that is protected from disclosure under the common-law right to privacy. Information must be withheld under the common-law right to privacy if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and of no legitimate interest to the public. *See 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). Therefore, we find that information contained within the information at issue which constitutes identifying information of victims of the alleged sexual assaults is protected from disclosure under the common-law right to privacy. Accordingly, we conclude that the department must withhold most of the identifying information that it has marked pursuant to section 552.101 in conjunction with the common-law right to privacy. *See Open Records Decision Nos. 393 (1983), 339 (1982)*. We also conclude that the department must withhold some additional identifying information that we have marked pursuant to section 552.101 in conjunction with the common-law right to privacy. However, some information that the department has marked as identifying information does not

constitute the identifying information of a victim of alleged sexual assault. Consequently, the department must release to the requestor this particular information which we have marked for release.

Finally, we note that the submitted information includes information that is subject to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, we conclude that the department must withhold the information that we have marked pursuant to section 552.130 of the Government Code.

In summary, the department must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The department must also withhold most of the identifying information of victims of alleged sexual assault that it has marked pursuant to section 552.101 in conjunction with the common-law right to privacy. The department must withhold some additional such identifying information that we have marked pursuant to section 552.101 in conjunction with the common-law right to privacy. The department must release to the requestor the information that we have marked for release. The department must withhold the information that we have marked pursuant to section 552.130 of the Government Code. The department must release the remaining submitted 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 Dep't of Pub. 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 179173

Enc. Marked documents

c: Ms. Linda Moore  
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(w/o enclosures)