



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 30, 2003

Ms. Angela K. Washington
Cowles & Thompson, P.C.
901 Main Street, Suite 4000
Dallas, Texas 75202-3793

OR2003-5252

Dear Ms. Washington:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185121.

The City of Addison (the "city"), which you represent, received a request for information relating to a particular sexual assault case. You claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses common law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). The types 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. *Id.* at 683. On numerous occasions, this office has found information tending to identify victims of serious sexual offenses to be protected by common law privacy. See, e.g., Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

¹Although you also raise section 552.102 as a possible exception to disclosure, this section pertains only to "a personnel file" of a public employee. Because the information at issue here consists of a criminal investigation, section 552.102 is inapplicable.

As indicated above, the requested information concerns a sexual assault case. However, as you note in your brief to this office, the victim is identified only by a pseudonym. We therefore conclude that release of the pseudonym or details of the assault would not implicate the victim's privacy rights. You also contend that the information that identifies a witness to the assault should be withheld because it "could be used to obtain the identity of the victim." However, you have not explained the basis for your concerns, nor is it apparent to this office how the information that identifies the witness gives any indication as to the identity of the victim. Therefore, under the present circumstances, we find that no portion of the submitted information may be withheld under section 552.101 on the basis of common law privacy.

You also contend that a portion of the submitted information is excepted under section 552.130. This section excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Accordingly, the city must withhold the marked Texas driver's license number pursuant to section 552.130(a)(1) of the Government Code.

Finally, we note that the submitted information includes a social security number that may be confidential under federal law. Section 552.101 also encompasses amendments to the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), that make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that such information is not obtained or maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, the marked Texas driver's license number must be withheld under section 552.130. The social security number in the submitted information must be released unless obtained or maintained pursuant to a law enacted on or after October 1, 1990. The remaining submitted information must be released.

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).

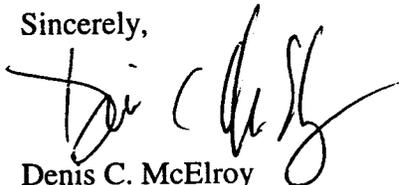
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/sdk

Ref: ID# 185121

Enc. Submitted documents

c: Ms. Gina Chalkley
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(w/o enclosures)