ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2003

Mr. Steven D. Monté
Assistant City Attorney
Criminal Law & Police Division
City of Dallas
1400 South Lamar Street #300A
Dallas, Texas 75215-1801

OR2003-8054

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 191023.

The Dallas Police Department (the "Department") received a request for certain 9-1-1 tapes and offense reports. You assert a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. We reviewed the information you submitted and considered the exception you claim.

Initially, we note that you have not submitted any 9-1-1 tapes for our review. We assume the Department has released any responsive 9-1-1 tapes to the requestor. However, if the Department has not released this information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Next, we address the Department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), 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 for information. *See* Gov't Code § 552.301(b). You state that the Department received the written request for information on August 22, 2003. Thus, the Department should have submitted a request for an attorney general decision no later than September 8, 2003. However, we received your facsimile, in which you request a decision from our office, on September 11, 2003. Consequently, we conclude that the Department failed to comply with the procedural requirements of section 552.301 in requesting this decision.

According to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. A governmental body must release information presumed public under section 552.302, unless it demonstrates a compelling reason to withhold the information. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest exists when some other source of law makes the information confidential or third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because you assert section 552.101 of the Government Code, which can provide a compelling reason to overcome the presumption of openness, we will address your arguments under this exception.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy, which protects information from disclosure when (1) it contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the information. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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. 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).

In this instance, some of the submitted information concerns allegations of sexual assault. Therefore, we conclude that the Department must withhold victim-identifying information, which we have marked, under section 552.101 in conjunction with common-law privacy.

Further, we note that the submitted information contains a social security number that may be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments 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 id.* We have no basis for concluding that the social security number in the responsive records is confidential under section 405(c)(2)(C)(viii)(I), and therefore, excepted from public disclosure under

section 552.101 and the referenced federal provision. However, we caution the Department that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number, you should ensure that no such information was obtained or is maintained by the Department pursuant to any provision of law enacted on or after October 1, 1990.

Last, we note section 552.130 governs some of the submitted information.[1] This provision excepts from public disclosure information relating to a driver's license or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. In this case, the information at issue contains a driver's license number and a class type. Therefore, the Department must withhold this information, which we have marked, under section 552.130 of the Government Code.

In summary, the Department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If applicable, the Department must withhold the social security number in accordance with federal law. The Department must withhold the driver's license information, which we have marked, under section 552.130 of the Government Code. The Department must release the remainder of the 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

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[1] The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

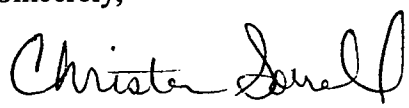
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 191023

Enc: Submitted documents

c: Ms. Kalen Donnelly
Attorney at Law
4514 Cole Avenue, Suite 600
Dallas, Texas 75205
(w/o enclosures)