



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 31, 2003

Mr. Steven D. Monté
Assistant City Attorney
Dallas Police Department
1400 South Lamar Street, #300A
Dallas, Texas 75215-1801

OR2003-9415

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# 193543.

The Dallas Police Department (the "department") received a request for "offense report #0593866M." We note that upon receipt of the request for information the department was required to either release the requested information or seek a decision from us pursuant to section 552.301 of the Government Code as to whether the department could withhold any portion of it from disclosure. *See* Gov't Code § 552.301. Although you submitted to us a copy of the written request for information, as well as information that is responsive to the request, you only submitted arguments to us for withholding offense reports that are not responsive to this request. Thus, you have not argued that any portion of the information that is responsive to this request for information is excepted from disclosure under the Public Information Act. *See* Gov't Code § 552.301(a) (stating that governmental body must raise exceptions to disclosure within ten business days of receiving request for information). Therefore, since the department did not request a decision from us as required by section 552.301(a) of the Government Code, the requested information is now presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). We note that a compelling interest must exist in order to overcome the presumption that the requested information is now public. *See id.* Normally, a compelling

interest exists when some other source of law makes the requested information confidential or when third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Based on our review of the submitted information that is responsive to the request, we find that portions of this information are made confidential by another source of law. Accordingly, we will address the applicability of section 552.101 of the Government Code to 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. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by the common-law right to privacy. Information is protected from disclosure by the common-law right to privacy when (1) it is highly intimate and embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See Industrial Foundation v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert denied*, 430 U.S. 931 (1977); *see also* Open Records Decision No. 611 at 1 (1992). The type 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. *See 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* Open Records Decision No. 339 (1982); *see also Industrial Foundation*, 540 S.W.2d at 683-85. Based on our review of the submitted information, we find that portions of this information, which we have marked, disclose the identity of an alleged victim of sexual assault. Accordingly, we conclude that the department must withhold this particular marked information pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. *See* Open Records Decision Nos. 393 (1983), 339 (1982).

Finally, we note that a portion of the submitted information is excepted from disclosure pursuant 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 Texas motor vehicle 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 the common-law right to privacy. The department must also withhold the Texas motor vehicle 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).

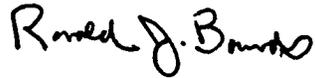
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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# 193543

Enc. Marked documents

c: Mr. Stuart Pulli
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(w/o enclosures)