



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 23, 2007

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2007-06444

Dear Mr. Weir:

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# 279823.

The San Antonio Police Department (the "department") received two requests for a specific incident report. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the department has not complied with the procedural requirements of section 552.301 of the Governmental Code in requesting this ruling. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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). This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law or affects third party interests. *See* Open Records Decision No. 150 (1977). Because section 552.101

of the Government Code can constitute such a compelling reason, we will consider whether this exception applies to the submitted information.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses the common-law right of privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the victim, as well as the nature of the incident, the entire report must be withheld to protect the victim’s privacy. Here, although you seek to withhold the submitted report in its entirety, you have not demonstrated nor does the report reflect a situation in which the entire report must be withheld on the basis of common-law privacy. Accordingly, we have marked the information that must be withheld under section 552.101 in conjunction with common-law privacy. As you do not raise any other exceptions against disclosure, the remaining 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/mcf

Ref: ID# 279823

Enc: Submitted documents

c: Ms. Karen DuPree
7734 Robin Rest
San Antonio, Texas 78209
(w/o enclosures)