



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 16, 2008

Ms. Martha T. Williams  
Olson & Olson, L.L.P.  
Wortham Tower, Suite 600  
2727 Allen Parkway  
Houston, Texas 77019

OR2008-14214

Dear Ms. Williams:

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# 324970.

The Humble Police Department (the "department"), which you represent, received a request for videotapes and images taken from a specified location involving a named individual. You state that you have released still photographs taken by the department. You claim that the submitted videotape is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

The submitted videotape contains nude imagery taken without the subjects' consent. The images are highly intimate and embarrassing. The videotape is, however, part of a criminal investigation. This office has found that the public has a legitimate interest in knowing the

general details of a criminal investigation and how such investigations are conducted. *See generally* *Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))). In this instance, the department has released the incident report and still photographs of the crime scene. We find that the public’s interest in the details of this investigation has been satisfied by the release of this information. We also find that the release of the videotape here does not further that legitimate public interest. *See Anonsen v. Donahue*, 857 S.W.2d 700 (Tex. App.—Houston [1st Dist.] 1993, no writ) (noting that while general subject matter may be of legitimate public concern, specific identity of or facts regarding a particular individual may not be); *see also* *Virgil v. Time, Inc.*, 527 F.2d 1122 (9th Cir. 1975) (legitimate public interest ends when publicity becomes morbid and sensational prying into private lives). Thus, the department must withhold the videotape under section 552.101 of the Government Code in conjunction with common-law privacy.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Olivia A. Maceo  
Assistant Attorney General  
Open Records Division

OM/eeg

Ref: ID# 324970

Enc. Submitted documents

c: Mr. Larry Posner  
Inside Edition  
555 West 57<sup>th</sup> Street  
New York, New York 10019  
(w/o enclosures)