



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 4, 1998

Mr. Michael Bostic
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
Municipal Building
Dallas, Texas 75201

OR98-2598

Dear Mr. Bostic:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119387.

The City of Dallas Police Department (the "department") received a request asking the department to preserve the 911 "communications and any subsequent audio communications and/or MDT computer transmissions made by the department in dispatching and responding to the scene or securing the arrest" of requestor's client on June 11, 1998. You state that you are treating the request for preservation as a request for documents under the Open Records Act. You have released some of the information; however, you seek to withhold "everything related to sexual assault, child abuse, and indecency with a child" under common-law privacy as encompassed by section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of documents.¹

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd.*

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

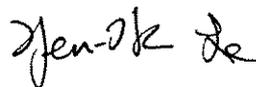
of Ins., 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

You state that you received the request for information on June 24, 1998. This office received your request for an open records ruling on August 19, 1998, more than ten business days after your receipt of the request for information. Thus, the requested information is presumed to be public. However, because common-law privacy is implicated here, you have made a compelling demonstration to overcome the presumption of openness.

Under section 552.101 of the Government Code, information may be withheld on the basis of common-law privacy. The doctrine of common-law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Clearly, a detailed description of an incident of aggravated sexual assault raises an issue of common-law privacy. See Open Records Decision Nos. 260 (1980), 237 (1980). In Open Records Decision No. 339 (1982), this office concluded that "a detailed description of an incident of aggravated sexual abuse raises an issue of common-law privacy," and, therefore, any information tending to identify the sexual assault victim should be withheld pursuant to common-law privacy. See Open Records Decision No. 393 (1983). We have reviewed the highlighted information, which you have submitted, and conclude that it does not contain any information protected by common-law privacy. Accordingly, you must release the highlighted information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

Mr. Michael Bostic - Page 3

Ref: ID# 119387

Enclosures: Submitted documents

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(w/o enclosures)