



July 27, 1999

Ms. Kathleen Weisskopf
Assistant City Attorney
City of Arlington
P.O. Box 231
Arlington, Texas 76004-0231

OR99-2111

Dear Ms. Weisskopf:

You have asked whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 126156.

The City of Arlington (the "city") received a request for information concerning a specified investigation. The requestor requests the following information

The police report and any information in the possession or control of the Arlington Police Department relating to the physical and sexual assault on [a named victim] which took place on March 7, 1997 at Arlington Memorial Hospital. Charlie Harbert III was arrested and charged in this matter.

In response to the request, you submit to this office for review the records at issue. You assert that the requested records are excepted from required public disclosure by section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

As you have noted, this office has previously ruled on the required public release of the requested information. *See* Open Records Letter No. 97-1440 (1997). In Open Records Letter No. 97-1440, the city requested a ruling from this office concerning information relating to a pending police investigation, and we concluded that most of the information could be withheld under section 552.108 of the Government Code. However, since the

investigation resulted in a conviction, and there is a subsequent request for the information, you now raise section 552.101 for the requested information.

Based on the city's correspondence to this office and the requestor's letter, it appears that the city did not seek an open records decision from this office within the statutory ten *business* day deadline. *See* Gov't Code § 552.301. The department's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. We note that where information is made confidential by other law or where third party interests are at issue, a compelling reason exists to overcome the presumption that information is open under section 552.303(e). *See* Open Records Decision No. 150 (1977). Accordingly, we must consider whether some of the information at issue must be withheld from public disclosure pursuant to section 552.101 of the Government Code.¹

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section protects information coming within the common-law right to privacy. Protection of the victim's common-law privacy interests constitutes a compelling reason for withholding information from disclosure. The test for whether information should be withheld from disclosure under common-law privacy is whether the information is (1) highly intimate or embarrassing to a reasonable person, and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977). The information requested involves allegations of aggravated sexual assault. In Open Records Decision No. 339 (1982), this office ruled that common-law privacy permits the withholding of the name of every victim of a serious sexual offense, and that the mere fact that a person has been the object of a rape or attempted rape reveals "highly intimate or embarrassing facts" about the victim, disclosure of which would be "highly objectionable to a person of ordinary sensibilities." Therefore, information concerning the victim's name, address, employment, telephone numbers, and any other types of identifying information contained in the responsive reports must be withheld from disclosure. We further conclude that the photographs depicting the victim must be withheld in their entirety under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses information protected by other statutes. We note that the submitted documents contain medical records governed by a statute. The Medical Practice

¹The Office of the Attorney General will raise section 552.101 on behalf of a governmental body when necessary to protect third-party interests. *See generally* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Act (the “MPA”), article 4495b of Vernon’s Texas Civil Statutes, protects from disclosure “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” V.T.C.S. art. 4495b, § 5.08(b). Access to medical records is governed by provisions outside the Public Information Act. Open Records Decision No. 598 (1991). The MPA provides for both confidentiality of medical records and certain statutory access requirements. *Id.* at 2. The medical records submitted to this office for review may only be released as provided by the MPA.

The submitted records also contain some search and arrest warrant affidavits. If the requested warrant affidavits have been filed with a court, they are a part of the public record and must be released. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (orig. proceeding) (if documents are part of public record they cannot be withheld under section 552.108). Furthermore, if the probable cause affidavits were made to support a search warrant, the affidavits are public by statute if they have been executed. *See Code Crim. Proc. art. 18.01(b)*. Therefore, the city may not withhold an executed search warrant affidavit from required public disclosure.

We also note that the information submitted for our review contains references to social security numbers. Federal law may prohibit disclosure of the social security numbers included in this request for records. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with 1990 amendments to the federal Social Security Act, § 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See Open Records Decision No. 622 (1994)*.

Finally, although you have not raised any other applicable exception, based on the records at issue, we must consider whether a portion of the submitted information should be excepted from required public disclosure under section 552.130 of the Government Code. Section 552.130 governs the release and use of information obtained from motor vehicle records issued by an agency of this state. Therefore, as for the remaining submitted photographs, although they may not be withheld under common-law privacy, we note that the license plate number visible in the photographs must be withheld under section 552.130 prior to release.

As for the remaining information not addressed above, we conclude that you have not shown compelling reasons why the remaining information at issue should not be released. In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. *See also Gov’t Code § 552.352 (distribution of confidential information is criminal offense)*.

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.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, stylized initial "S".

~~Sam Haddad~~
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 126156

Encl.: Submitted documents

cc: Mr. Marilyn S. Mollett
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(w/o enclosures)