



July 29, 1999

Ms. Lilia Ledesma-Gonzalez  
Assistant City Attorney  
City of McAllen  
P.O. Box 220  
McAllen, Texas 78505-0220

OR99-2138

Dear Ms. Ledesma-Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126396.

The City of McAllen (the "city") received a request on April 23, 1999 for copies of offense reports numbers 99-005111 and 99-005126. The city received a request on May 5, 1999 for copies of the photographs from the same cases. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the documents at issue.

Chapter 552 of the Government Code imposes a duty on a governmental body 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. 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).

The city received the first request for information on April 23, 1999. The city did not request a decision from this office until May 12, 1999, more than ten business days after the city received the request.<sup>1</sup> Pursuant to section 552.302, the requested offense reports are presumed public. A section 552.108 claim does not overcome this presumption. The common-law right to privacy does, however, overcome the presumption of openness. Therefore, we will not consider your section 552.108 claim for the offense reports, but we must apply the common-law right of privacy to the offense reports.

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if (1) it is highly intimate or embarrassing such that its publication would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 683-85.

The requested offense reports pertain to an alleged case of aggravated sexual assault. 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 assault victim should be withheld pursuant to the common-law right to privacy. We have marked the information in the offense reports that the city must withhold from the general public to protect the identity of the victim. The remaining information in the offense reports must be released.

The city timely requested a decision from this office regarding the disclosure of the requested photographs. Therefore, we will consider your section 552.108 claim for the photographs. Section 552.108(a)(1) of the Government Code exempts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” You indicate that the requested photographs relate to a pending criminal prosecution. Based upon this representation, we conclude that the release of the photographs would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the city may withhold the photographs from disclosure under section 552.108(a)(1).<sup>2</sup>

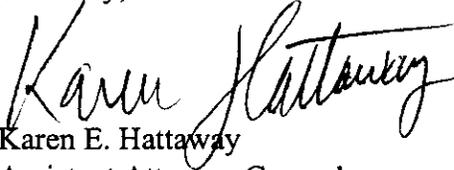
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<sup>1</sup>The city’s request for a decision was sent to this office via first class United States mail and is postmarked May 12, 1999. *See* Gov’t Code § 552.308 (timeliness of action by mail).

<sup>2</sup>We note that photographs which identify the victim are also protected by the common-law right to privacy and must be withheld from disclosure under section 552.101. We have marked the photographs accordingly.

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 "Karen Hattaway". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 126396

encl. Marked documents

cc: Mr. David Gallegos  
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4200 N. Bicentennial  
McAllen, Texas 78504  
(w/o enclosures)