



February 27, 2001

Mr. Charles M. Allen, II
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2001-0730

Dear Mr. Allen:

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# 144501.

The City of Richardson Police Department (the "department") received a request for the "police reports" for the arrest of a named individual for two named offenses on two specified dates; "arraignment documents" confirming the specified charges "and any other charges" against the named individual; "any paperwork" setting future trial or pretrial dates; "all mug shots" of the named individual; "any information detailing the current investigation of Q - The Sports Club"; and "any past records of complaints or investigations involving Q - The Sports Club." You have submitted for our review a one page arrest report for case number 00-088714, a one page arrest report for case number 00-101220, the first page of incident report number 00-60150, the first page of incident report number 00-91889, and a one page document titled "Prisoner Control Record." You assert that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.

In pertinent part, section 552.301 of the Government Code provides that a governmental body "must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request." Gov't Code § 552.301(b). You state the present request was received by the department on November 29, 2000. Accordingly, the department was required to ask for a decision of this office no later than December 13, 2000, the tenth business day after

November 29, 2000. Although your request letter to this office is dated December 12, 2000, your request contains a postal meter imprint dated December 14, 2000 and your request was not received by this office until December 18, 2000. You have not demonstrated that the department's request to this office was timely sent to this office by U.S. or interagency mail. *See* Gov't Code § 552.308. We therefore conclude the department did not timely request a decision of this office as required by section 552.301(b). In addition, the submitted documents are apparently the documents that the department has made available to the requestor. The department evidently did not submit to this office copies or representative samples of all of the specific information that was requested and that the department asserts is excepted from required disclosure. *See* Gov't Code § 552.301(e)(1)(D), (2).

If a governmental body does not request a decision of this office as provided by 552.301, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302; *see also 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). Normally, a compelling interest sufficient to overcome the section 552.302 presumption of openness is that some other source of law makes the information confidential or that third party interests are at stake. *See, e.g.*, Open Records Decision No. 150 at 2 (1977). You assert sections 552.103 and 552.108 on behalf of the department, but these are discretionary exceptions that do not demonstrate a compelling reason to withhold information from the public.¹ Accordingly, none of the information responsive to the request may be withheld under section 552.103 or 552.108.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You state that "[t]he investigation involves victims of sexual assault and certain information was redacted as exempt under 552.101." This office has held that information that identifies an individual as a sexual assault victim constitutes information that is subject to required withholding under section 552.101 in conjunction with the common law right to privacy. *See, e.g.*, Open Records Decision No. 339 at 2 (1982); *see also Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). But none of the submitted information reveals the identity of a sexual assault victim. Indeed, our review of the submitted documents reveals no information that must be withheld under section 552.101 in conjunction with the common law right to privacy.

¹Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding); 549 at 6 (1990) (governmental body may waive informer's privilege); 522 at 4 (1989) (discretionary exceptions in general).

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). Three of the submitted documents contain the social security number of an individual. We have no basis for concluding that the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas driver's license numbers that we have marked under section 552.130. The remaining information in the submitted documents must be released to the requestor.

As to the remaining information that is responsive to the request, because you have not submitted the information for our review, we have no basis for finding any of it confidential. Thus, we have no choice but to order the information released per section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge this decision in court as outlined below.

In summary, the department may be required to redact the social security numbers we have marked in the submitted documents pursuant to section 552.101, as provided above. Pursuant to section 552.130, the department must redact the driver's license numbers we have marked in the submitted documents. Pursuant to section 552.302, the department must release to the requestor the remaining information in the submitted documents, as well as all other information that is responsive to the request.

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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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).

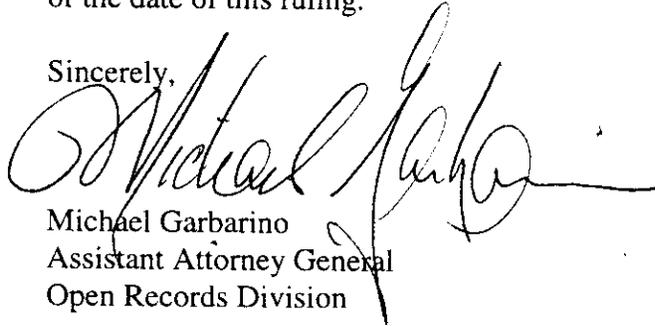
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 General Services Commission 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,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 144501

Encl. Submitted documents

cc: Mr. James Aguire
Reporter
Richland Chronicle
Fax:(972)238-6037
(w/o enclosures)