



November 16, 2001

Mr. Steven D. Monté  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
2014 Main Street, Room 501  
Dallas, Texas 75201

OR2001-5317

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154967.

The Dallas Police Department (the “department”) received a written request for the “communications to 911 and any subsequent audio communications and/or MDT computer transmissions made by the department in dispatching and responding to the scene” of an alleged sexual assault. Apparently in lieu of the requested information, you have submitted to this office a copy of the offense report pertaining to the alleged assault. You contend that the requested information is excepted from disclosure under section 552.101 of the Government Code.

We note at the outset that you did not request a decision from this office within ten business days of receipt of the records request. Section 552.301(a) of the Government Code requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information that the governmental body wishes to withhold unless there has been a previous determination that the requested information is excepted from required public disclosure. We note that you did not request a decision from our office until September 14, 2001, more than ten business days after you received the request for information. When a governmental body fails to comply with the requirements of section 552.301, the information at issue is presumed public. Gov’t Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome

this presumption. Gov't Code § 552.302; *see also Hancock*, 797 S.W.2d at 381. A compelling reason for withholding information is demonstrated where information is made confidential by law or where third party interests are at issue. Open Records Decision No. 150 (1977).

Additionally, section 552.301(e) of the Government Code dictates certain procedures that a governmental body must follow when it seeks a decision from the attorney general as to whether requested information falls within an exception to disclosure. Among other requirements, the governmental body must submit to this office within fifteen business days of receipt of an information request "a copy of the *specific* information requested, or . . . representative samples of the information if a voluminous amount of information was requested." Gov't Code § 552.301(e)(1)(D) (emphasis added). Otherwise, 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.

You have not submitted to this office a copy of the information responsive to the request. We therefore have no basis on which to conclude that there exists a compelling reason for withholding the requested information. Consequently, we have no choice but to conclude that the requested information is presumed to be public under section 552.302 and therefore must be released to the requestor.<sup>1</sup> If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

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

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<sup>1</sup>We do not address here the extent to which the offense report you submitted to this office is excepted from required public disclosure.

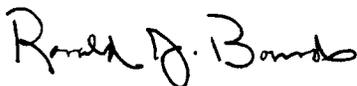
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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 Texas Building and Procurement 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/RWP/sdk

Ref: ID# 154967

Enc. Submitted documents

c: Mr. E. Joseph Fox  
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(w/o enclosures)