



February 1, 2002

Ms. Mollie E. Childs
Assistant Police Legal Advisor
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2002-0487

Dear Ms. Childs:

You have asked whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 160192.

The Arlington Police Department (the "department") received a request for a copy of the report of an alleged sexual assault. You assert that the requested information is excepted from disclosure based on sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses common law privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Information is excepted from required public disclosure by a common law right of privacy if the information (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 683-85.

In Open Records Decision No. 393 (1983), this office concluded that, although generally only that information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common law privacy, the governmental body was required to withhold the entire report because the identifying information was so inextricably intertwined with other releasable information. Open Records Decision No. 393

(1983) at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, *writ denied*) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). It appears that the requestor in this case knows the identity of the alleged victim. We believe that, in this instance, withholding only the identifying information from the requestor would not preserve the victim's common law right to privacy. We therefore conclude that the department must withhold the entire offense report pursuant to the common law privacy principles incorporated by section 552.101. Because section 552.101 is dispositive, we do not address your claims regarding section 552.108.

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).

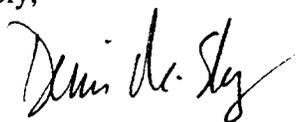
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't 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,



Denis McElroy
Assistant Attorney General
Open Records Division

DMc/seg

Ref: ID# 160192

Encl. Submitted documents

cc: Mr. Arzbee Robinson
1702 Crest Point Drive
Arlington, Texas 76012
(w/o enclosures)