



March 11, 2002

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

OR2002-1151

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#159678.

The Dallas Police Department (the "department") received a request for information pertaining to a specified criminal offender, charge, and victim. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note that the instant information request is not from a member of the public, but from an employee of another governmental entity. We ruled in Open Records Decision No. 661 (1999) that whether a governmental entity may release information to another governmental entity is not a question under the Public Information Act (the "Act"), as the Act is concerned with the required release of information to the *public*. Gov't Code §§ 552.001, .002, .021; *see* Attorney General Opinions, H-683 (1975), H-242 (1974), M-713 (1970); Open Records Decision No. 655 (1997). For many years, this office has recognized that it is the public policy of this state that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of statutory duties. *See, e. g.*, Attorney General Opinion H-836 (1976); Open Records Decision No. 655 (1997). *But see* Attorney General Opinions DM-353 at 4 n. 6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute's enumerated

entities), JM-590 (1986) (same); Open Records Decision No. 655 (1997) (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). In adherence to this policy, this office has acknowledged that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 655 (1997), 414 (1984). Accordingly, the department has the discretion to release the requested information to the Texas Department of Criminal Justice. However, should you decline to exercise that discretion, you must nonetheless adhere to the following decision regarding the applicability of your claimed exceptions to the requested information.

We begin consideration of your claimed exception by noting that the submitted information appears to comprise a completed department offense report. Section 552.022 of the Government Code makes certain information expressly public, and therefore not excepted from required public disclosure unless made expressly confidential under other law. *See* Gov't Code § 552.022(a). One such category of expressly public information under section 552.022 is "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108[.]" *Id.* § 552.022(a)(1). You do not raise a claim of exception under section 552.108. The submitted information must therefore be released under section 552.022, unless it is expressly made confidential under other law.

Section 552.101 of the Government Code excepts from disclosure information that is "considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Included within this exception is information protected under the common law right to privacy. The doctrine of common-law privacy protects information if: (1) it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in it. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We have previously concluded that a sexual assault victim has a common-law privacy interest that prevents disclosure of information that would identify her. *See* Open Records Decision No. 393 (1982); *cf. 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 a legitimate interest in such information).

The submitted offense report is for the offense of aggravated assault. Based on your assertion that the "report pertains to an [a]ggravated [s]exual [a]ssault," we conclude that, based on section 552.101 in conjunction with the common law right of privacy, the department must withhold from disclosure the victim-identifying information in the submitted offense report.

In summary, the department has the discretion to release the submitted information to the requestor as an interagency transfer. Should the department decline to exercise such discretion, then the department must withhold the victim-identifying information in the report under section 552.101 of the Government Code in conjunction with the common law right of privacy.

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 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/JSB/seg

Ref: ID# 159678

Enc: Submitted documents

c: Mr. Mike Scotten
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Beeville, Texas 78102
(w/o enclosures)