



August 29, 2002

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

OR2002-4840

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# 167835.

The Dallas Police Department (the “department”) received a request for a copy of a specified offense report. You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

We note that a portion of the information at issue is subject to section 552.101 in conjunction with section 261.201 of the Family Code.¹ Section 261.201 provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The information that we have marked concerns a report of alleged or suspected abuse made under chapter 261 of the Family Code. The department has not indicated that it has adopted a rule that governs the release of this type of information. We, therefore, assume that no such regulation exists. Given that assumption, we conclude that the department must withhold from disclosure the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

You claim that portions of the information at issue are excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy. Section 552.101 also encompasses information that is protected from disclosure under the common-law right to privacy. We note that information must be withheld from disclosure under the common-law right to privacy if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common-law privacy interest which prevents disclosure of information that would identify the victim. *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 a legitimate interest in such information). Therefore, we find the identity of the victim of the alleged sexual assault in this report is protected from disclosure under the common-law right to privacy. Accordingly, the department must withhold from disclosure the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. *See* Open Records Decision Nos. 393 (1983), 339 (1982).

We also note that the information at issue contains a Texas license plate number that is subject to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, we conclude that the department must withhold from disclosure the Texas license plate number that we have marked pursuant to section 552.130 of the Government Code.

In summary, the department must withhold from disclosure the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold from disclosure the information that we have marked pursuant to section 552.101 of the Government Code in

conjunction with the common-law right to privacy. The department must withhold from disclosure the Texas license plate number that we have marked pursuant to section 552.130 of the Government Code. The department must release the remaining information in this report to the requestor.

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 167835

Enc. Marked documents

cc: Ms. Eileen Moring
1701 North Greenville #204
Richardson, Texas 75081
(w/o enclosures)