



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

April 2, 2003

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

OR2003-2236

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# 181332.

The Dallas Police Department (the "Department") received a request for any documents associated with various crimes or investigations in a particular geographic area. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you did not meet your burden under section 552.301 of the Government Code with respect to the request for information. According to the plain language of section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Furthermore, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. In this case, you state the Department received a request for information on January 31, 2003. You should have submitted your request for an attorney general opinion no later than February 14, 2003. The Department should have forwarded all other required documentation to this office by February 24, 2003. However, we did not receive your letter and supporting documentation (via facsimile transmission) requesting an opinion from our office until

March 18, 2003. Therefore, we find that you did not request a ruling from this office or submit the required information within the statutorily prescribed periods. Consequently, we conclude the Department failed to comply with the requirements of sections 552.301(b) and 552.301(e) of the Government Code.

According to the plain language of section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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 is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because sections 552.101 and 552.130 of the Government Code qualify as compelling reasons to overcome the presumption of openness, we will address your concerns about withholding this information despite your failure to comply with section 552.301.

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 excepts from required public disclosure information held confidential under case law.

Concerning the police report documenting sexual assault, pursuant to the Texas Supreme Court decision in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), section 552.101 applies to information when its disclosure would constitute the common law tort of invasion of privacy through the disclosure of private facts. To be within this common law tort, the information must (1) contain highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and (2) be of no legitimate concern to the public. In Open Records Decision No. 339 (1982), this office determined 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 legitimate interest in such information). Accordingly, we determine that the Department must withhold only the victim's identifying information. We have reviewed the submitted documents and have marked those portions that must be withheld under section 552.101 in conjunction with the common law right to privacy.

Finally, you have marked motor vehicle information which you claim is excepted from disclosure under section 552.130 Government Code. We have reviewed the

representative sample of information you submitted and we have considered your arguments.<sup>1</sup> Section 552.130 provides in relevant part as follows:

(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[.]

Gov't Code § 552.130. Therefore we agree that, pursuant to section 552.130, the Department must withhold the Texas issued license plate number from disclosure. The Department must release the remaining information.

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

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<sup>1</sup> We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 Pub. 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,



Robert F. Maier  
Assistant Attorney General  
Open Records Division

RFM/seg

Ref: ID# 181332

Enc. Submitted documents

c: Ms. Laura D. Yates  
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(w/o enclosures)