OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 14, 2003

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2003-2517

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179317.

The Texas Department of Public Safety (the "DPS") received a request for information concerning the deaths of two named individuals. You state the DPS will release much of the requested information; however, you assert some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have reviewed the information you submitted and we have considered the exception you claim.

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 the doctrine of common-law privacy. For information to be protected from public disclosure under common-law privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information when (1) it contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the disclosure of the information. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Industrial Found.*, 540 S.W.2d

at 683. In this instance, the information pertains to a criminal murder investigation that also involves sexual assault allegations. After reviewing the information, we believe the identifying information of one of the two individuals you have marked is highly intimate or embarrassing and the public has no legitimate interest in this information. *See Industrial Found.*, 540 S.W.2d at 685. Therefore, the DPS must withhold only the identifying information of the victim we have marked under section 552.101 of the Government Code and common-law privacy.

Section 552.101 of the Government Code also incorporates information protected by other statutes. As you acknowledge, the submitted information contains polygraph information subject to section 1703.306 of the Occupations Code. Section 1703.306 states the following:

> (a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:
>
> > (1) the examinee or any other person specifically designated in writing by the examinee;
> >
> > (2) the person that requested the examination;
> >
> > (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
> >
> > (4) another polygraph examiner in private consultation; or
> >
> > (5) any other person required by due process of law.

Occ. Code § 1703.306. Here, the submitted documents contain information derived from various polygraph examinations, access to which is governed by section 1703.306 of the Occupations Code. *See* Occ. Code § 1703.306. As we find no evidence that any of the access provisions of section 1703.306 apply in this instance, the DPS must withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Lastly, we note the submitted documents contain information subject to section 552.130 of the Government Code. This provision excepts from public disclosure information relating to a driver's license or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. In this case, the submitted information contains two license plate numbers and a vehicle identification number. Therefore, the DPS must withhold the

information pertaining to motor vehicle records, which you have redacted, under section 552.130 of the Government Code.

In summary, the DPS must withhold the identifying information of one of the individuals named in the submitted information, which we have marked, under section 552.101 of the Government Code and common-law privacy. The DPS must withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The DPS must withhold the redacted motor vehicle records information in accordance with section 552.130 of the Government Code. The DPS must release the remainder of the submitted information 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).

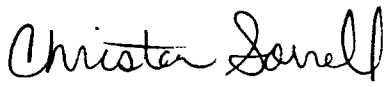
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 179317

Enc: Submitted documents

c: Ms. Gretchen Miller
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(w/o enclosures)