



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2003

Mr. Duncan Fox
Deputy General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2003-6638

Dear Mr. Fox:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188056.

The Texas Department of Public Safety (the "department") received a written request for the department's investigation of former Trooper Roy Gonzales. You have submitted to this office as responsive to the request a "Report of Investigation" and three videotapes, which contain information you contend is excepted from required disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right of privacy.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

You explain that the department's investigation concerned allegations that the named trooper traded "sexual favors with females he had stopped for traffic violations for either the reduction or elimination of criminal charges." The submitted records reflect that the trooper ultimately was convicted on one count of official oppression. After reviewing the records you submitted to this office, we generally agree that the information you seek to withhold is

excepted from public disclosure on privacy grounds. *See* Open Records Decision No. 339 (1982) (identity of sexual assault victim protected by common law privacy). In addition, we find that other information must also be withheld because it would tend to identify the victims. However, some of the information you seek to withhold does not tend to reveal the identities of the victims and is not otherwise protected by common-law privacy; this information must therefore be released. We have marked the information in the report that must be withheld pursuant to section 552.101 in conjunction with common-law privacy. Furthermore, because you state that the department “knows of no practical manner in which to edit the videotapes to remove all of the audio and visual references to the victim[s] and still have any type of comprehensible videotape,” we conclude that the department must withhold the responsive videotapes in their entirety pursuant to section 552.101.

We also note that the department may be required to withhold some of the submitted information pursuant to section 552.1175 of the Government Code, which provides in pertinent part:

(a) This section applies only to:

...

(2) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a), (b). The submitted records contain a former address of both a former and a current state trooper as well as other information that may be protected by section 552.1175. The department therefore must withhold the information that we have marked pursuant to section 552.1175 of the Government Code if either officer made a proper section 552.1175 election with the department at a time when the respective trooper was a

peace officer. Otherwise, we conclude that the department must release the information that we have marked pursuant to section 552.1175 of the Government Code.

Finally, we note that the Report of Investigation contains information the department is required to withhold pursuant to section 552.130(a)(2) of the Government Code. Section 552.130(a)(2) requires the withholding of information relating to "a motor vehicle title or registration issued by an agency of this state." Consequently, pursuant to section 552.130(a)(2), the department must withhold Texas license plate number contained in the Report of Investigation.

In summary, the department must withhold the victim-identifying information in the Report of Investigation, as well as the submitted videotapes in their entirety, pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. We have marked information concerning two officers that must be withheld if either officer elected to make such information confidential under section 552.1175. The department must also withhold the license plate number coming within the protection of section 552.130(a)(2). We have marked the information that the department must withhold; the remaining submitted information must be released 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,

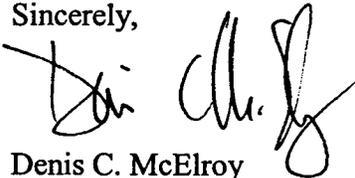
at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/RWP/seg

Ref: ID# 188056

Enc: Submitted documents and videotapes

c: Ms. Sara Hendricks
The Victoria Advocate
P.O. Box 1518
Victoria, Texas 77902
(w/o enclosures)