



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 13, 2004

Ms. Linda L. Sjogren
Assistant City Attorney
City of San Angelo
P.O. Box 1751
San Angelo, Texas 76902

OR2004-10560

Dear Ms. Sjogren:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 213619.

The City of San Angelo and the San Angelo Police Department (collectively, the "city") received four requests for information related to a specified incident. You claim that the victim's identifying 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 have also considered comments submitted by a representative of one of the requestors. *See Gov't Code § 552.304* (providing that person may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the common law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information that either identifies or tends to identify a victim of sexual assault or other sex-related offenses may be withheld under common law privacy. Accordingly, the alleged victim's identifying information, which we have marked, is protected from disclosure pursuant to section 552.101 of the Government Code in conjunction with common law privacy.

We note that some of the remaining submitted information is confidential under section 552.130 of the Government Code.¹ In relevant part, section 552.130 provides:

(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[.]

Therefore, the Texas license plate numbers we have marked are excepted under section 552.130.

Lastly, you indicate that the information at issue may have been previously released by the city. You question whether this prior release of the information at issue constitutes a waiver of otherwise applicable exceptions to disclosure. We note that mandatory exceptions under the Public Information Act, such as sections 552.101 and 552.130, are not waivable. *See* Gov't Code § 552.007 (voluntary disclosure of certain information is allowed, unless disclosure is expressly prohibited by law or the information is confidential under law); *see also* Open Records Decision No. 400 (1983) (prohibition against selective disclosure does not apply when governmental body releases confidential information to the public). Thus, even if the city previously released the requested information to the public, the city would nevertheless be required to withhold any information found to be confidential. Consequently, the city must withhold the information we have marked pursuant to sections 552.101 and 552.130. The city must release all 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

¹ The Office of the Attorney General will raise mandatory exceptions like section 552.130 on behalf of a governmental body but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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).

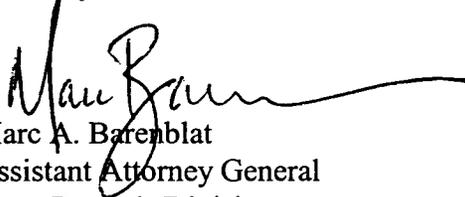
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/sdk

Ref: ID# 213619

Enc: Submitted documents

c: Mr. Eric Finley
San Angelo Standard Times
34 West Harris Avenue
San Angelo, Texas 76903
(w/o enclosures)

Mr. Jon Mark Hogg
Jackson Walker L.L.P.
301 West Beauregard Avenue, Suite 200
San Angelo, Texas 76903
(w/o enclosures)

Ms. Katie Evans
KSAN-TV
2802 Southwest Boulevard
San Angelo, Texas 76904
(w/o enclosures)

Ms. Linda Shoemaker
P.O. Box 62892
San Angelo, Texas 76904
(w/o enclosures)

Mr. Roy McQueen
Snyder Daily News
3600 College Avenue
Snyder, Texas 79549
(w/o enclosures)