



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 13, 2005

Mr. Chris Settle
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2005-00427

Dear Mr. Settle:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 216815.

The City of Dallas (the "city") received a request for police calls for service and offense, incident or arrest reports relating to three specified addresses during a particular time interval. You claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.¹ We assume that the city has released any other types of information that are responsive to this request, to the extent that such information existed when the city received this request. If not, then any such information must be released at this time.² We note that the Act does not require the city to

¹To the extent that the submitted information is a sample of the requested information, this letter ruling assumes that this information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

²See Gov't Code §§ 552.006, .221, .301, .302; Open Records Decision No. 664 (2000).

release information that did not exist when it received this request or to create responsive information.³

Initially, we address the city's obligations under section 552.301 of the Government Code. This section prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body does not request an attorney general decision as prescribed by section 552.301, the information requested in writing is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302.

You state that the Dallas Police Department received the present request for information on October 29, 2004. The submitted copy of the request reflects, however, that the city received this request prior to October 29. As you have not informed us of the date of the city's receipt of this request, we are unable to conclude that the city has complied with section 552.301 in requesting this decision. *See id.* § 552.301(b), (e)(1)(C). Therefore, the submitted information is presumed to be public under section 552.302 and must be released, unless there is a compelling reason to withhold any of the information. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome by a demonstration that the information is confidential by law or that third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. As the city's claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure, we will address this exception.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception incorporates constitutional and common-law rights of privacy. Constitutional privacy protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); *Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987)*. The first is the interest in independence in making certain important decisions related to the "zones

³*See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); *Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983)*.

of privacy,” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981); Open Records Decision No. 455 at 3-7 (1987). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); Open Records Decision No. 455 at 6-7 (1987). This aspect of constitutional privacy balances the individual’s privacy interest against the public’s interest in the information in question. *See* Open Records Decision No. 455 at 7 (1987). Constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs.” *Id.* at 8 (quoting *Ramie v. City of Hedwig Village*, 765 F.2d at 492).

Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See, e.g.*, Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

You believe that some of the submitted information may be private under section 552.101. We have marked the private information that the city must withhold under section 552.101. The rest of the submitted information must be released.

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

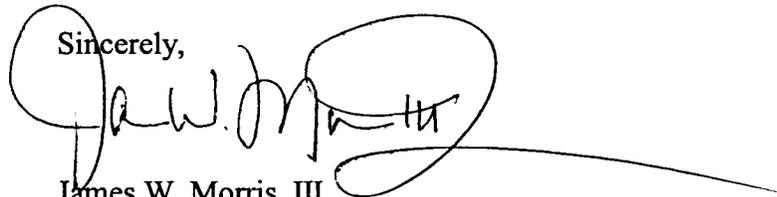
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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,

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 216815

Enc: Submitted documents

c: Mr. Roger Albright
3301 Elm Street
Dallas, Texas 75226-1637
(w/o enclosures)