



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 18, 2005

Mr. Asem Eltiar  
Assistant City Attorney  
Arlington Police Department  
P. O. Box 1065  
Arlington, Texas 76004-1065

OR2005-01515

Dear Mr. Eltiar:

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# 218788

The Arlington Police Department (the "department") received a request for a specific offense report. You claim that the requested 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.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The information at issue relates to a sexual assault. Generally, only information tending to identify victims of serious sexual offenses is protected by common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). In those instances, however, where it is demonstrated that the requestor knows the identity of the victim, the entire report must be withheld to protect the victim's privacy. You argue that the entire report should be withheld on the basis of common-law privacy to protect the victim's identity. However, you have not given us any information that would lead us to believe that the requestor knows the victim's identity. Thus, you have not demonstrated that the entire report must be withheld on the basis of common-law privacy. We note, in this case, that even though the victim used a pseudonym, references are made to her true identity including her name, address, and phone number. Thus, the marked identifying information must be withheld under section 552.101 and common-law privacy.

We also note that the submitted information contains social security numbers. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We note that this federal provision is intended to protect the privacy interests of individuals; therefore, this provision does not encompass the social security number of a deceased individual. *See* Attorney General Opinion H-917 at 3-4 (1976) (right of privacy lapses upon death); Open Records Decision No. 272 at 1 (1981). Thus, you must release the social security number of the deceased individual. Furthermore, you have not cited a law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes you to obtain or maintain the arrestee's social security number. Thus, we have no basis for concluding that the arrestee's social security number is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Government Code on the basis of that federal provision. We caution that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing the arrestee's social security number, you should ensure that it was not obtained or maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, we have marked the information that must be withheld pursuant to section 552.101 and common-law privacy. The arrestee's social security number may be confidential under federal law. 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/krl

Ref: ID# 218788

Enc. Submitted documents

c: Olen Martin  
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(w/o enclosures)