The ruling you have requested has been amended as a result of litigation and has been attached to this document.

ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 25, 2005

Mr. Scott A. Durfee
General Counsel
Harris County District Attorney's Office
1201 Franklin Street, Suite 600
Houston, Texas 77002

OR2005-03520

Dear Mr. Durfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 226184.

The Harris County District Attorney's Office (the "D.A.'s Office") received a request for two videotapes and an audiotape pertaining to an investigation of Richard Thomas. The D.A.'s Office takes no position as to the disclosure of the information. However, Mr. Thomas' attorney objects to release of the information. We have considered the comments from Mr. Roger Bridgwater, who is Mr. Thomas' attorney, and reviewed the submitted information. *See* Gov't Code § 552.304.

Mr. Bridgwater objects to the release of the tapes because they were not shown in a public setting. This argument is a not a basis for withholding information under any of the exceptions enumerated in the Public Information Act. *See* Gov't Code §§ 552.101 - .1425. Thus, the D.A.'s Office may not withhold the tapes based on Mr. Bridgwater's argument.

However, the tapes do contain information excepted from disclosure by section 552.101 of the Government Code. This office will raise a mandatory exception like section 552.101 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that the following types of information are excepted from required public disclosure under constitutional or common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have reviewed the information and conclude that some information on the audiotape concerning a third party is intimate information and there is no legitimate public interest in the information. We have indicated which information the D.A.'s Office must withhold under common-law privacy. The D.A.'s Office must release the remaining requested 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 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).

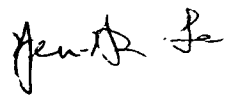
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 226184

Enc. Submitted documents

c: Mr. Izhar Harpaz
Producer
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(w/o enclosures)

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2950 North Loop West, Suite 500A
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(w/o enclosures)

CAUSE NO. GN501601

RICHARD F. THOMAS AND JACKIE THOMAS, Plaintiffs,	§	IN THE DISTRICT COURT OF
V.	§	TRAVIS COUNTY, TEXAS
THE HONORABLE GREG ABBOTT, ATTORNEY GENERAL OF THE STATE OF TEXAS, Defendant.	§	201ST JUDICIAL DISTRICT

FILED
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FINAL JUDGMENT

On September 14, 2005, the Court held a hearing on the merits in the above-styled lawsuit. All parties appeared by their respective counsel of record. After considering the pleadings, including Defendant's pleas to the jurisdiction, the evidence and argument of counsel, the Court is of the opinion that Plaintiffs should be granted only partial relief.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant Attorney General of Texas' Pleas to the Jurisdiction are SUSTAINED;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that common law privacy excepts from disclosure those portions of Exhibit B-1 and Exhibit B-3, that are marked by pink highlight, in the transcripts for Exhibit B-1 and B-3, said transcripts being attached to the Parties Stipulation on Information at Issue, on file with the Court, in a sealed envelope;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the face of the undercover officer in Exhibit B-3 MUST LJL be blurred by Harris County District Attorney's Office prior to public disclosure, as stipulated to by Defendant, in his Motion for Summary Judgment, on the basis of Tex. Gov't Code § 552.119;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the remaining portions

of Exhibit B-1 and Exhibit B-3, and all of Exhibit B-2 are subject to public disclosure; and

The Court **DENIES** all other relief not granted in this judgment.

This is a final judgment with regard to all claims and defenses asserted in the above-entitled and numbered matter.

SIGNED this 14th day of September, 2005.

Presiding Judge