ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2005

Ms. Lisa Villarreal
Assistant Attorney General
Assistant Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2005-06006

Dear Ms. Villarreal:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 227686.

The Office of the Attorney General (the "OAG") received a request for the victim compensation claim file pertaining to a specific crime victim. The OAG has released the amount of compensation but claims that the remaining information is excepted from disclosure under section 552.132 of the Government Code. We have considered the OAG's claimed exception to disclosure and have reviewed the submitted sample of information.[1]

The OAG acknowledges it has failed to comply with section 552.301 of the Government Code. *See* Gov't Code § 552.301(b) (agency required to submit request for decision and assert exceptions within ten business days of receiving request for information), (e) (agency required to submit certain items within fifteen business days of receiving request for information). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information

[1]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). The applicability of section 552.132 is such a compelling reason.

Section 552.132 of the Government Code provides in pertinent part as follows:

> (a) In this section, "crime victim" means a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, who has filed an application for compensation under that subchapter.
>
> (b) A crime victim may elect whether to allow public access to information held by the crime victim's compensation division of the attorney general's office that relates to:
>
> > (1) the name, social security number, address, or telephone number of the crime victim; or
> >
> > (2) any other information the disclosure of which would identify or tend to identify the crime victim.
>
> (c) An election under Subsection (b) must be:
>
> > (1) made in writing on a form developed by the attorney general for that purpose and signed by the crime victim; and
> >
> > (2) filed with the crime victims' compensation division before the third anniversary of the date that the crime victim filed the application for compensation.

Gov't Code § 552.132. When the crime victim is awarded compensation, section 552.132(e) requires the release of the crime victim's name and the amount of compensation awarded only. *Id.* § 552.132(e). The OAG states this victim has received compensation and it has released the award amount. However, section 552.132(b) still permits the victim to elect to withhold other victim identifying information. Here, the victim elected to withhold her identifying information from disclosure under section 552.132(b). In most cases, the OAG would only be allowed to withhold the victim's identifying information from public disclosure. In this instance, however, because the requestor knows the identity of the victim,

withholding only the identifying information would not effectuate the purpose of the statute. Accordingly, we agree that the OAG must withhold Exhibit B, which contains all other information concerning the victim, under section 552.132 of the Government Code.

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).

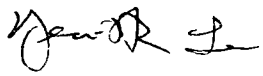
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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
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YHL/sdk

Ref: ID# 227686

Enc: Submitted documents

c: Ms. Linda L. Wade
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(w/o enclosures)