



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 28, 2006

Mr. Steven D. Monté  
Assistant City Attorney  
Criminal Law & Police Division  
City of Dallas  
1400 South Lamar Street  
Dallas, Texas 75215-1801

OR2006-01965

Dear Mr. Monté:

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# 243303.

The Dallas Police Department (the "department") received a request for certain arrest reports, offense reports, and 911 calls. 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.

Initially, we note that you have not submitted records of the requested 911 calls for our review. *See* Gov't Code § 552.301(e)(1)(D). As you have not submitted the 911 calls, we assume the department has released this information to the extent it existed on the date the department received this request. If not, the department must do so at this time. *See id.* §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we must address the department's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney

general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(a), (b). Pursuant to section 552.301(e), the governmental body must, within fifteen business days of receiving the request, submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). You inform us that the department received this request on October 26, 2005. However, you did not request a ruling from this office or supply the requested information until December 21, 2005. Consequently, we find that the department failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *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 section 552.302); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because section 552.101 can provide a compelling reason to withhold information, we will address your arguments concerning this exception.

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 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). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

You argue that the submitted information should be withheld in its entirety to protect the privacy rights of a named individual because the requestor knows the individual's identity. Generally, when a governmental body demonstrates that a requestor knows the identity of a sexual assault or attempted suicide victim and the nature of the incident in question, the information at issue must be withheld in its entirety to protect the victim's privacy rights. In this instance, however, the submitted information does not pertain to a sexual assault or

attempted suicide. Therefore, the submitted information may not be withheld in its entirety. However, after our review, we find that some of the submitted information is intimate or embarrassing, and of no legitimate concern to the public. The release of this information, which we have marked, would violate the named individual's common law privacy rights. Therefore, the information we have marked must be withheld under section 552.101. The remaining 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).

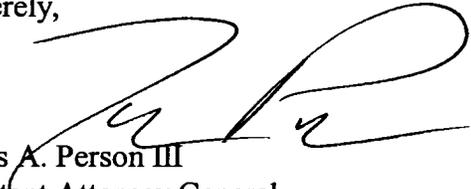
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



James A. Person III  
Assistant Attorney General  
Open Records Division

JAP/sdk

Ref: ID# 243303

Enc. Submitted documents

c: Mr. James Jennings  
4250 Robertson  
Dallas, Texas 75241  
(w/o enclosures)