



January 30, 2002

Mr. Steven D. Monté  
Assistant City Attorney  
City of Dallas  
2014 Main Street, Room 501  
Dallas, Texas 75201

OR2002-0450

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157918.

The City of Dallas (the "city") received a request for all crime reports for a specified period of time that concern a named apartment complex. You state that you have released some responsive information to the requestor. You claim, however, that portions of the requested information are 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 must address the city's admitted failure to comply with section 552.301 of the Government Code in asking for this attorney general decision. Section 552.301 provides in relevant part that "[t]he governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the 10<sup>th</sup> business day after the date of receiving the written request [for information]." Gov't Code § 552.301(b). Here, you inform us that the city received the request for information on November 2, 2001. Thereafter, the city had ten business days in which to ask for this decision and raise its exceptions to disclosure. You failed to ask for this decision within the time period specified by section 552.301(b), and you do not demonstrate that you otherwise complied with section 552.301(b) in requesting this decision. Thus, as you failed to comply with section 552.301(b), the requested information is presumed to be subject to disclosure and must be released unless there is a compelling reason to withhold any of the information in question. Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379,

380-81 (Tex. App.--Austin 1990, no writ). In that regard, your section 552.101 assertions can provide a compelling reason; thus, we will address those assertions accordingly. *See* Open Records Decision Nos. 630 at 3 (1994) (noting that, generally, the operation of section 552.302 can be overcome by a demonstration that certain information is confidential by law or that it implicates the privacy interests of a third party), 325 (1982) (same).

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses the doctrines 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).

This office has found that the following types of information are excepted from required public disclosure under 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), and information related to acts of attempted suicide, *see* Open Records Decision No. 422 (1984). In addition, any information tending to identify sexual assault victims should be withheld pursuant to common law privacy. *See* Open Records Decision Nos. 393 (1983), 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, *writ denied*) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). We have marked the information that is excepted from disclosure under section 552.101 in conjunction with common law privacy.

Section 552.101 also encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are

separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Some of the offense reports at issue here involve juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, you must withhold the offense reports we have marked as excepted from disclosure under section 552.101 in conjunction with section 58.007 of the Family Code.

In sum, you must withhold the information we have marked as excepted from disclosure under section 552.101 in conjunction with common law privacy and section 58.007. 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).

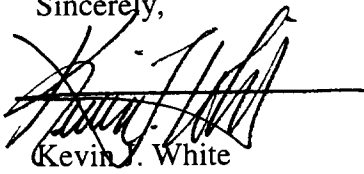
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Department of Public 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. 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,



Kevin J. White  
Assistant Attorney General  
Open Records Division

KJW/seg

Ref: ID# 157918

Enc. Marked documents

c: Mr. Eric Conner  
TriPro Mangement  
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(w/o enclosures)