



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

January 14, 2003

Ms. Linda L. Sjogren
Assistant City Attorney
Legal Department
City of San Angelo
P.O. Box 1751
San Angelo, Texas 76902

OR2003-0273

Dear Ms. Sjogren:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174967.

The City of San Angelo Police Department (the "department") received a request for information pertaining to a specific incident. 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 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 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. *Id.* In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common-law privacy interest which prevents disclosure of information that would identify the victim. *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). In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. We have marked the information that you must withhold pursuant to section 552.101 in conjunction with common-law privacy.

We note that the report also contains information subject to section 552.130.¹ Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

The submitted information contains two driver's license numbers. However, one of the driver's license numbers pertains to the requestor. As section 552.130 is intended to protect a person's privacy, under section 552.023 of the Government Code, a person who is the subject of the information or the person's authorized representative has a special right of access to information protected under section 552.130. Gov't Code § 552.023 (person has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interests). Accordingly, the requestor here has a special right of access to his driver's license information. Therefore, the department must release to the requestor his driver's license number. You must withhold the remaining Texas driver's license number, which we have marked, under section 552.130.

In summary, you must withhold the information that we have marked under section 552.101 in conjunction with common-law privacy. You must release the requestor's driver's license number pursuant to section 552.023.² You must withhold the driver's license number, which we have marked, pursuant to section 552.130. You must release the remaining information.

¹We note that the department did not raise section 552.130 of the Government Code. However, the Office of the Attorney General will raise mandatory exceptions including section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note that some of the information that you must release contains or consists of confidential information that is not subject to release to the general public. See Gov't Code § 552.352. However, the requestor in this instance has a special right of access to some of the information. Gov't Code § 552.023. Because some of the information is confidential with respect to the general public, if the department receives a future request for this information from an individual other than the requestor or his authorized representative, the department should again seek our decision.

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. 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,

A handwritten signature in cursive script, appearing to read "Maverick F. Fisher".

Maverick F. Fisher
Assistant Attorney General
Open Records Division

MFF/seg

Ref: ID# 174967

Enc: Submitted documents

c: Mr. Phuong Le
3530 Shadyhill Drive
San Angelo, Texas 76904
(w/o enclosures)