ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2006

Mr. Asem Eltiar
Assistant City Attorney
Arlington Police Department
P. O. Box 1065
Arlington, Texas 76004-1065

OR2006-00836

Dear Mr. Eltiar:

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# 240764.

The Arlington Police Department (the "department") received a request for a specific offense report. 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 the submitted information includes an arrest warrant and affidavit for warrant of arrest signed by a magistrate. Article 15.26 of the Code of Criminal Procedure states "[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information." Crim. Proc. Code art. 15.26. Information that is specifically made public by statute may not be withheld from the public under any of the exceptions to the Act. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Therefore, the arrest warrant and affidavit for warrant of arrest, which we have marked, must be released in their entirety pursuant to article 15.26 of the Code of Criminal Procedure.

Additionally, the submitted information includes an affidavit to support a search warrant. An affidavit to support a search warrant is made public by statute if the search warrant has been executed. *See* Code Crim. Proc art. 18.01(b). In this instance, the search warrant at issue was executed; therefore, the department must release the search warrant affidavit we have marked.

Next, we note that the submitted information is subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

> the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:
>
> > (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, the submitted information consists of a completed investigation. Unless the completed investigation is expressly confidential under other law or excepted from disclosure pursuant to section 552.108 of the Government Code, it must be released to the requestor. As section 552.101 of the Government Code constitutes other law for purposes of section 552.022, we will consider your arguments.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 also 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. Texas 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. This office has also determined that common-law privacy protects the following information: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (*citing United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989)); the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987); illnesses, operations, and physical handicaps of applicants, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress. Open Records Decision No. 343 (1982).

The information at issue relates to a sexual assault. Generally, only information tending to identify victims of serious sexual offenses is protected by common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). In those instances, however, where it is demonstrated that the requestor knows the identity of the victim, the entire report must be withheld to protect the victim's privacy. You argue that the entire report should be withheld on the basis of common-law privacy to protect the victim's identity. However, you have not given us any information that would lead us to believe that the requestor knows the

victim's identity. Thus, you have not demonstrated that the entire report must be withheld on the basis of common-law privacy. We note, in this case, that even though the victim used a pseudonym, references are made to her true identity including her name, address, and phone number. Thus, the marked identifying information must be withheld under section 552.101 and common-law privacy. We have marked some additional information that is private and must be withheld under section 552.101.

Section 552.101 encompasses information made confidential by other statutes. The submitted information contains medical records, access to which are governed by the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides as follows:

> (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
>
> (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code. § 159.002(b), (c). Medical records must be released upon the patient's signed, written consent, provided that the consent specifies: (1) the information to be covered by the release; (2) reasons or purposes for the release; and (3) the person to whom the information is to be released. *Id.* §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). The submitted medical records, which we have marked, may be released only as provided under the MPA.

The submitted information also contains fingerprint information. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). It does not appear to this office that section 560.002 permits the disclosure of the submitted fingerprint information to the requestor. Therefore, the department must withhold this information, which we have marked, under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. In accordance with section 552.130 of the Government Code, the department must withhold the Texas motor vehicle record information we have marked.

We also note that the submitted information contains social security numbers. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the department must withhold the social security numbers contained in the submitted information under section 552.147.[1]

In summary, the department must release the marked arrest warrant and affidavit for warrant of arrest pursuant to article 15.26 of the Code of Criminal Procedure. The marked search warrant affidavit must be released pursuant to article 18.01(b) of the Code of Criminal Procedure. We have marked the information that must be withheld under section 552.101 and common-law privacy. The submitted medical records, which we have marked, may be released only as provided under the MPA. The department must withhold fingerprint information, which we have marked, under section 552.101 in conjunction with section 560.003 of the Government Code. The department must withhold the Texas motor vehicle record information we have marked under section 552.130, and social security numbers under section 552.147. The remaining submitted 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).

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[1]We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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,

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/er

Ref: ID# 240764

Enc. Submitted documents

c: Ms. Noritta Riley
Deputy Commissioner
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(w/o enclosures)