



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 21, 2006

Ms. April M. Virnig  
Taylor Olson Adkins Sralla Elam L.L.P.  
6000 Western Place, Suite 200  
I-30 at Bryant-Irvin Road  
Fort Worth, Texas 76107

OR2006-01656

Dear Ms. Virnig:

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# 242611.

The City of Southlake (the "city"), which you represent, received a request for information pertaining to a specified investigation. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides that "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body" may not be withheld from the public unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation made for the city, which is made expressly public by section 552.022 and must be released, unless it is excepted from disclosure under section 552.108 or confidential under other law. Because sections 552.101, 552.130, and 552.147 of the Government Code are other laws that make information confidential, we will address these exceptions.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common law privacy, which 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. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common law privacy. 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 identities of victims of sexual abuse, see Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common law privacy. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. See Open Records Decisions Nos. 393 (1983), 339 (1982); see also Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld); cf. *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 legitimate interest in such information). The submitted information pertains to an investigation of sexual assault, and the requestor knows the identity of the alleged victim; thus, withholding only the identifying information from the requestor would not preserve the victim's common law right to privacy. We therefore conclude that the submitted information is subject to the common law privacy principles incorporated by section 552.101.

In this instance, however, we believe that the requestor, an investigator with the Department of State Health Services ("DSHS"), has a special right of access to criminal history record information. Section 411.110 of the Government Code specifically grants a right of access for the DSHS to obtain criminal history record information ("CHRI") from the Department of Public Safety ("DPS"). Section 411.110 states that "the [DSHS] is entitled to obtain from the [DPS] criminal history record information maintained by the [DPS] that relates to...an applicant for a license, the owner or manager of an applicant for a massage establishment license, or a license holder under Chapter 455, Occupations Code." Gov't Code § 411.110(a)(2). Chapter 455 of the Occupations Code governs massage therapy. Furthermore, pursuant to section 411.087 of the Government Code, an agency which is entitled to obtain CHRI from the DPS is also authorized to "obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency]." Gov't Code § 411.087(a)(2); see also 25 T.A.C. § 157.37. CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2).

The requestor identifies himself as an investigator with the DSHS and states that he is seeking "information regarding the investigation and any charges as a result of the investigation of" a registered massage therapist. Accordingly, we conclude that sections 411.087 and 411.110 of the Government Code give the DSHS a statutory right of access to a portion of the submitted information. *See* Gov't Code § 411.082(2). Therefore, the city must release information from the submitted documents that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). The remainder of the submitted information must be withheld under section 552.101 of the Government Code in conjunction with common law privacy. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Jaime L. Flores  
Assistant Attorney General  
Open Records Division

JLF/er

Ref: ID# 242611

Enc. Submitted documents

c: Mr. Champ R. Kerr  
Investigator IV  
Professional Licensing & Certification Unit  
P.O. Box 141369  
Austin, Texas 78714  
(w/o enclosures)