



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 4, 2006

Chief G.M. Cox  
Corsicana Police Department  
200 North 12<sup>th</sup> Street  
Corsicana, Texas 75110

OR2006-04605

Dear Chief Cox:

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# 247024.

The Corsicana Police Department (the "department") received a request for all information pertaining to two individuals from July 1, 2005 to the present. You state that you have released some of the requested information. You claim that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. 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.* at 683. In addition, the compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a

reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

In this instance, the request seeks unspecified law enforcement records regarding two named individuals. We therefore find that this request implicates these individuals' rights to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common law privacy.

We note that the requestor is employed by an attorney who may represent one of the named individuals at issue. If the requestor is seeking the requested information on behalf of the authorized representative of the individual copied in the written request for information, the requestor has a special right of access to information that would ordinarily be withheld to protect that individual's common law privacy interests. *See Gov't Code § 552.023(b)* (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). However, in this instance, the submitted information pertains to an alleged sexual assault. As noted earlier, information relating to a sexual assault is protected under common law privacy. 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). Therefore, even if the requestor has a right of access under section 552.023 to the criminal history of one of the named individuals at issue, given the circumstances of the request and the nature of the alleged crime, the submitted information must nonetheless be withheld in its entirety under section 552.101 to preserve the victim's common law right to privacy.

In summary, to the extent the department maintains law enforcement records depicting the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common law privacy. Even if the requestor has a right of access under section 552.023

of the Government Code to the criminal history of the named individual copied in her request, the submitted information must nonetheless be withheld under section 552.101 of the Government Code to protect the victim's common law right to privacy.<sup>1</sup>

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).

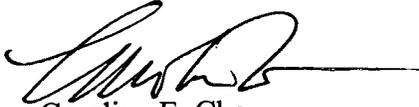
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

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<sup>1</sup>As our ruling is dispositive, we need not address your claim against disclosure.

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,



Caroline E. Cho  
Assistant Attorney General  
Open Records Division

CEC/sdk

Ref: ID# 247024

Enc. Submitted documents

c: Ms. C.J. Liška  
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(w/o enclosures)