ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 4, 2006

Ms. Jan Clark
Assistant City Attorney
City of San Marcos
630 East Hopkins
San Marcos, Texas 78666

OR2006-11597

Dear Ms. Jan Clark:

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# 261019.

The City of San Marcos (the "city") received a request for a copy of a particular police report. You claim that the submitted 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 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. This section encompasses the doctrine of common law privacy. Common law privacy protects information that is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and in which the public has no legitimate interest. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 688 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. The submitted documents contain information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. The city would typically be allowed to withhold or redact only this highly intimate or embarrassing information. However, in this case the requestor

knows the identity of the individual involved and the nature of the incident at issue. Thus, withholding or redacting only certain details of the incident from the requestor would not preserve the individual's common law right of privacy. Accordingly, based on section 552.101 the city must withhold all of the submitted information in order to protect the privacy of the individual to whom the information relates.

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).

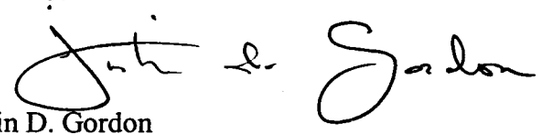
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/sdk

Ref: ID# 261019

Enc. Submitted documents

c: Mr. Robert Lawson
P.O. Box 340249
Lakeway, Texas 78734
(w/o enclosures)