



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 17, 2006

Ms. Katherine M. Powers  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
1400 South Lamar Street, #300A  
Dallas, Texas 75215-1801

OR2006-12170

Dear Ms. Powers:

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# 262026.

The Dallas Police Department (the "department") received a request for a specified offense report. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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. 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. *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. *Id.*

The submitted information relates to alleged sexual assaults. 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); *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). Based upon your representations and our review of the submitted information, we agree that the department must withhold the complainants' identifying information, which we have marked, pursuant to section 552.101 in conjunction with the common law right to privacy. However, you fail to explain why the remainder of the information is excepted under section 552.101 in conjunction with common-law privacy. Thus, the department may not withhold any of the remaining information on that basis.

You also claim that section 559.002 of the Government Code is applicable to a portion of the submitted information.<sup>1</sup> Section 560.002 provides as follows:

Sec. 560.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

(A) the individual consents to the disclosure;

(B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or

(C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Gov't Code § 560.002. A biometric identifier in the possession of a government body is exempt from disclosure under Chapter 552. *Id.* §§ 560.001-.003. There is no indication that the requestor has a right of access under section 560.002 to the fingerprint information at

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<sup>1</sup>This section, formerly codified at chapter 559 of the Government Code as section 559.002, was renumbered as section 560.002 by the Regular Session of the Seventy-eighth Legislature. *See* Act of May 20, 2003, 78<sup>th</sup> Leg., R.S., ch. 1275, § 2 (78), 2003 Tex. Gen. Laws 4140, 4144.

issue. Accordingly, the department must withhold the fingerprint you have marked pursuant to section 560.003 of the Government Code.

Finally, you note that the submitted information contains Texas motor vehicle record information. 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[.]

Gov't Code § 552.130(a). The department must withhold the marked Texas motor vehicle information pursuant to section 552.130 of the Government Code.

In sum, the department must withhold: (1) the complainants' identifying information pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy; (2) the fingerprint you have marked pursuant to section 560.003 of the Government Code; and (3) the marked Texas motor vehicle information under section 552.130 of the Government Code. The remaining submitted information must be released.

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,



Alix K. Cornett  
Assistant Attorney General  
Open Records Division

AKC/krl

Ref: ID# 262026

Enc. Submitted documents

c: Ms. Maribel Ceja  
1140 Empire Central Place, #103  
Dallas, Texas 75247  
(w/o enclosures)