



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 22, 2007

Mr. Nathan C. Barrow  
Assistant City Attorney  
Office of the City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2007-06357

Dear Mr. Barrow:

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# 279370.

The City of Fort Worth (the "city") received a request for a specified incident report pertaining to an alleged sexual assault. 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. We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 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. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, the governmental body must meet both prongs of this test. *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. This office also has found that some kinds of medical information or information indicating disabilities or specific illness are excepted from required public disclosure under common-law privacy. See Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). 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 and have failed to demonstrate a need to withhold the entire report. Thus, the entire report may not be withheld on the basis of common-law privacy. We note that even though the victim used a pseudonym, the submitted information contains other identifying information. Thus, we have marked the victim's identifying information, as well as medical information pertaining to other individuals, which must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

We note that the submitted information contains Texas driver's license information.<sup>1</sup> 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. Accordingly, the city must withhold the Texas driver's license we have marked in the submitted information in accordance with section 552.130.

In summary, the city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The Texas driver's license number we have marked must be withheld 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).

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.130 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



M. Alan Akin  
Assistant Attorney General  
Open Records Division

MAA/jb

Ref: ID# 279370

Enc. Submitted documents

c: Ms. Deanna Boyd  
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(w/o enclosures)