



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 10, 2007

Mr. Asem Eltiar  
Assistant City Attorney  
Arlington Police Department  
Legal Division, Mail Stop 04-0200  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR2007-11801

Dear Mr. Eltiar:

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# 288858.

The Arlington Police Department (the "department") 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.

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. The submitted incident report 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 argued nor given us any information that would lead us to believe that the requestor knows the victim's identity. Moreover, you have not provided any other arguments explaining why the department believes the report should be withheld in its entirety. Thus, the entire report may not be withheld on the basis of common-law privacy. In this instance, the victim used a pseudonym. The report, however, contains other identifying information of the victim. Additionally, the names of other victims of sexual assault are included in the incident report. Thus, we have marked the victims' identifying information which must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses information protected by other statutes such as section 1703.306 of the Occupations Code. Section 1703.306(a) provides that "[a] polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person[.]" The department must withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

We note that the submitted incident report contains the e-mail address of a member of the public. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).<sup>1</sup> *See* Gov't Code § 552.137(a)-(c). The e-mail address contained in the incident report is not of a type specifically excluded by section 552.137(c). Therefore, the department must withhold the e-mail address we have marked in accordance with section 552.137 unless the department receives consent for its release.

In summary, the department must withhold the identifying information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The polygraph information we have marked must be withheld under section 552.101 of the

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.137 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).

Government Code in conjunction with section 1703.306 of the Occupations Code. The department must withhold the personal e-mail address we have marked under section 552.137, unless the owner of the e-mail address has affirmatively consented to its public disclosure. The remaining information must be released to the requestor.

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,

A handwritten signature in black ink, appearing to read "M. Alan Akin", with a horizontal line extending from the end of the signature.

M. Alan Akin  
Assistant Attorney General  
Open Records Division

MAA/mcf

Ref: ID# 288858

Enc. Submitted documents

c: Mr. William Kelly, Jr.  
P.O. Box 231472  
Montgomery, Alabama 36123  
(w/o enclosures)