



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 25, 2009

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
The City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2009-02485

Dear Ms. Sandoval-Walker:

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# 338153.

The City of El Paso (the "city") received a request for a specific incident report. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

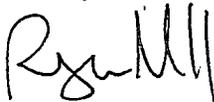
Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that: (1) contains 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. *See 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.* at 683. In this instance, the information sought by the requestor relates to a sexual assault investigation. Generally, only information that either identifies or tends to identify a victim of sexual assault or another sex-related offense must be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when this 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). In this instance, the submitted

information demonstrates that the requestor knows the identity of the alleged sexual assault victim. Accordingly, the department must withhold the requested report in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.¹ However, the request indicates that the requestor is the parent of the alleged victim. Therefore, if this requestor is able to demonstrate that she is an authorized representative of the alleged victim, then the requestor has a right of access to the submitted information pursuant to section 552.023 of the Government Code, and the city may not withhold the information on the basis of common-law privacy or section 552.147 of the Government Code. See Gov't Code §§ 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles), .229(a) (concerning consent to release information under sections 552.023 and 552.307).

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/eb

Ref: ID# 338153

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your section 552.147 argument against disclosure.