



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 14, 2009

Mr. Mark Daniel
City Attorney
Evans, Daniel, Moore, & Evans
Sundance Square
115 West Second Street, Suite 202
Fort Worth, Texas 76102

OR2009-04845

Dear Mr. Daniel:

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# 339973 (Request No. 09-39).

The Watauga Police Department (the "department"), which you represent, received a request for a specified offense report. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us the submitted incident report number was the subject of a previous open records request in response to which this office issued Open Records Letter No. 2008-15733 (2008). In that ruling, we determined that, except for basic information, report number 08-1268 may be withheld under section 552.108 of the Government Code. Furthermore, in releasing basic information, we ruled the department must withhold the information identifying the complainant under section 552.101 in conjunction with common-law privacy. However, the requestor in this instance knows the identity of the individual whose privacy interests are implicated. Thus, the circumstances in this instance are different than those in Open Records Letter No. 2008-15733, and we conclude the department may not rely on that ruling as a previous determination. *See* Open Records Decision No. 673 (2001) (describing circumstances in which a governmental body may rely on the first type

of previous determination). As such, we will address your claimed exceptions against disclosure for 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. 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). In Open Records Decision No. 393 (1983), this office concluded that, generally, only information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also 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); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). The requestor in this case knows the identity of the alleged victim. We believe, in this instance, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. We conclude, therefore, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,

A handwritten signature in cursive script that reads "C. Alvarado".

Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 339973

Enc. Submitted documents

cc: Requestor
(w/o enclosures)