



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 29, 2009

Ms. Teresa Brown
Senior Open Records Assistant
City of Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2009-08949

Dear Ms. Brown:

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# 347451.

The Plano Police Department (the "department") received a request for information relating to a specified incident. You claim that the submitted 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 encompasses information made confidential by other statutes, including section 1703.306 of the Occupations Code. Section 1703.306 of the Occupations Code provides in relevant part:

(a) 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 other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

Occ. Code § 1703.306. You note that the information you have submitted in Exhibit C consists of a polygraph examination report that is within the scope of section 1703.306. You state that the requestor is the legal representative of the examinee. Thus, the department has the discretion to release the polygraph report of the requestor's client pursuant to section 1703.306(a)(1). *See* Open Records Decision No. 481 at 9 (1987) (statutory predecessor to Occ. Code § 1703.306 permitted, but did not require, examination results to be disclosed to polygraph examinees). Otherwise, the department must withhold the polygraph examination report under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses common-law privacy which excepts from disclosure private facts about an individual. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Information is excepted from required public disclosure by a common-law right of privacy if the information (1) 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. *See id.* at 685.

In Open Records Decision No. 393 (1983), this office concluded that, generally, only that 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. *See* 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 submitted information pertains to a sexual assault investigation. As the attorney for the suspect in this case, the requestor knows the identity of the alleged victim. In this instance withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. Therefore, the department must withhold the remaining submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

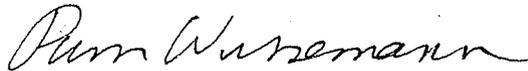
In summary, the department has the discretion to release the polygraph examination report to the requestor pursuant to section 1703.306(a)(1) of the Occupations Code. The department must withhold the remaining submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.¹

¹As our ruling is dispositive, we do not address your other 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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/dls

Ref: ID# 347451

Enc. Submitted documents

c: Requestor
(w/o enclosures)