



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2009

Ms. S. McClellan
Assistant City Attorney
City of Dallas
Criminal Law and Police Section
1400 South Lamar
Dallas, Texas 75215

OR2009-13671

Dear Ms. McClellan:

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# 356649 (DPD No. 2009-5506).

The Dallas Police Department (the "department") received a request for information pertaining to a named individual. You claim that some the requested 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.

Section 552.101 of the Government Code excepts from disclosure "information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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. Generally, only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. 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 legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

In this instance, report numbers 0188968-W, 0942837-R, and 0312737-R relate to alleged sexual assaults, and the requestor knows the identity of the alleged victim. Thus, withholding only the identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, report numbers 0188968-W, 0942837-R, and 0312737-R would ordinarily be withheld in their entirety under section 552.101 in conjunction with common-law privacy.

We note, however, that the requestor in this instance is a representative of the Adult Protective Services division of the Texas Department of Family and Protective Services ("DFPS"). Under chapter 48 of the Human Resources Code, DFPS's duties include the investigation of abuse, neglect, or exploitation in the provision of services to an elderly or disabled person. *See* Hum. Res. Code §§ 48.151, .152. Section 48.154 provides in pertinent part:

(a) The [DFPS¹] or state agency, as appropriate, shall have access to any records or documents, including client-identifying information and medical and psychological records, necessary to the performance of the [DFPS]'s or state agency's duties under this chapter. The duties include but are not limited to the investigation of abuse, neglect, or exploitation or the provisions of services to an elderly or disabled person. A person or agency that has a record or document that the [DFPS] or state agency needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to the [DFPS] or agency.

Id. § 48.154. The requestor states DFPS is in need of the submitted information to perform its duties under chapter 48, which is to investigate the abuse, neglect, or exploitation of a disabled person. *See id.* §§ 48.151, .152. Thus, because the requestor is seeking information needed to perform the duties of DFPS under chapter 48, the requestor has a right of access to this information. Therefore, the department may not withhold report numbers 0188968-W, 0942837-R, and 0312737-R under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

¹*See* Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Gen. Laws 611, 641 ("A reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.").

Further, you assert some of the submitted information is excepted from disclosure under section 552.108(a)(1) of the Government Code.² However, this section is a general exception to disclosure under the Act. Thus, we find the requestor's statutory right of access prevails over this general exception. *See* ORD 451. Therefore, the department may not withhold any of the remaining information under section 552.108(a)(1). Thus, we conclude that the submitted information must be released to this requestor.³

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, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 356649

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime ... if ... release of the information would interfere with the detection, investigation, or prosecution of crime [.]". Gov't Code § 552.108(a)(1).

³If the department receives another request for the submitted investigative records from a person who would not have a special right of access to submitted information, the department should resubmit the investigative records and request another decision. *See id.* §§ 552.301(a), .302; Open Records Decision No. 673 (2001).