



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 4, 2009

Mr. Adam C. Falco
Senior Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2009-15699

Dear Mr. Falco:

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# 361444.

The College Station Police Department (the "department") received a request for a copy of Police Report #09-008886. You claim that the submitted information is excepted from disclosure under section 552.108. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have redacted names from the submitted documents that you seek to withhold. You do not assert, nor does our review of our records indicate, that you have been authorized to withhold this information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). As we are able in this instance to ascertain the nature of the information you have redacted, we will determine whether it is excepted from public disclosure. In the future, the department must not redact requested information that it submits to this office in seeking an open records ruling, unless the information is the subject of a previous determination under section 552.301. *See* Gov't Code §§ 552.301(e)(1)(D), .302. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302. *See id.*

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 common-law right of privacy, which protects information if it (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* include 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 information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). 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. *See* ORD 393, 339; *see also* ORD 440 (detailed descriptions of serious sexual offenses must be withheld). In this instance, the submitted report indicates that the requestor knows the identity of the alleged sexual assault victim listed in the submitted information. Thus, withholding only the victim's identifying information from the requestor would not preserve the victim's common-law right of privacy. Accordingly, to protect the victim's privacy, the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.¹

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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

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

Ref: ID# 361444

Enc. Submitted documents

c: Requestor
(w/o enclosures)