



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 20, 2009

Mr. Paul F. Wieneskie
Attorney at Law
204 South Mesquite
Arlington, Texas 76010

OR2009-16557

Dear Mr. Wieneskie:

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# 362003.

The Euless 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 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 the doctrine of common-law privacy, which 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). 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 Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common-law privacy interest which prevents disclosure of information that would identify the victim. *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). Generally, only the 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; 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* Open Records Decisions Nos. 393 (1983), 339; *see also* Open Records Decision No. 440 (1986). In this instance, the requestor knows the identity of the alleged sexual assault victim. Thus, withholding only the alleged victim's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy. Therefore, the department must generally withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note the requestor may be the authorized representative of sexual assault victim at issue. A person or a person's authorized representative has a special right of access to private information concerning that person under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or individual's authorized representative requests information concerning that individual). Therefore, if the requestor is not the authorized representative of the individual at issue, then the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is the authorized representative of the individual at issue, then the department may not withhold the submitted information under section 552.101 in conjunction with common-law privacy, and we will determine if the submitted information must be withheld on another basis.

Section 552.101 of the Government Code also encompasses confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find that

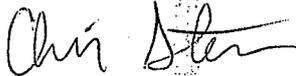
the information we have marked constitutes CHRI, and must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

In summary, (1) if the requestor is not the authorized representative of the individual at issue, then the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy; (2) however, if the requestor is the authorized representative of the individual at issue, then the department must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code and release the remaining information to the requestor.

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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 362003

Enc. Submitted documents

c: Requestor
(w/o enclosures)