



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 15, 2013

Mr. Brent A. Money
Counsel for the City of Greenville
Scott, Money & Ray, P.L.L.C.
P.O. Box 1353
Greenville, Texas 75403-1353

OR2013-08049

Dear Mr. Money:

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# 488127.

The City of Greenville (the "city"), which you represent, received a request for the incident reports and laboratory reports pertaining to two specified cases. You claim 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.

Initially, we note you have redacted a social security number from the submitted information pursuant to section 552.147(b) of the Government Code.¹ However, we understand you have also redacted certain information under section 552.101 of the Government Code in conjunction with the doctrine of common-law privacy. You do not assert, nor does our review of our records indicate, the city has been authorized to withhold the information at issue without seeking a ruling from this office. *See Gov't Code § 552.301(a); Open Records Decision No. 673 (2001)*. Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information at issue;

¹Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See Gov't Code § 552.147(b)*.

thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the city should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses the doctrine of common-law privacy, which excepts from disclosure private facts about an individual. *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. *Id.* To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The type of information considered highly intimate or 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. 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, 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 Decision Nos. 393 at 2 (1983); 339 (1982), 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). You assert the submitted information is protected in its entirety by common-law privacy. In this instance, the submitted information pertains to the investigations of two sexual assaults. You state the requestor knows the identity of the sexual assault victims at issue. Based on your representation and our review, we agree withholding only identifying information from the requestor would not preserve the victims' common-law rights to privacy. We conclude, therefore, the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.²

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.

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 488127

Enc. Submitted documents

c: Requestor
(w/o enclosures)