



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2013

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

OR2013-12452

Dear Ms. Armstrong:

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# 493742 (ORR# 2013-05110).

The Dallas Police Department (the "department") received a request for service number 56203A. You claim 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.¹

You inform this office that the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-05761 (2013). In Open Records Letter No. 2013-05761, we determined the department may withhold the marked information under sections 552.108 and 552.147 of the Government Code and must withhold the marked motor vehicle record information under section 552.130 of the Government Code. However, Open Records Letter No. 2013-05761 involved a requestor with a special right of access to some of the information that was previously ruled upon by this office and that would otherwise have been confidential under common-law privacy. The current request involves a different requestor, who knows the identity of the

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

individual whose privacy interest is at issue but who also may be the authorized representative of that individual.

If the instant requestor is the authorized representative of the previous requestor, the individual whose privacy interest is at issue, then the instant requestor also has a special right of access to the private information. *See* Gov't Code § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”). In that case, we find that the circumstances on which the prior ruling is based have not changed, and the department may continue to rely on Open Records Letter No. 2013-05761 as a previous determination and withhold or release the requested information in reliance on the prior ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

If, however, the instant requestor is not the authorized representative of the individual whose privacy interest is at issue, then the instant requestor does not have a special right of access to the private information. In that case, we find that circumstances have changed, and the department may not rely on Open Records Letter No. 2013-05761 as a previous determination. Accordingly, we will address your claimed exceptions. *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 of the Government Code 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of this test must be established. *Id.* at 681-82.

The type of information considered 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, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. 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 requestor in this case knows the identity of the alleged victim. We believe that, in this instance, withholding only identifying information from the requestor would not preserve the victim's common law right to privacy. We conclude, therefore, that the department must withhold the requested information in its entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.²

To summarize: If the instant requestor is the authorized representative of the individual whose privacy interest is at issue, the department may continue to rely on Open Records Letter No. 2013-05761 as a previous determination and withhold or release the requested information in reliance on the prior ruling. If, however, the instant requestor is not the authorized representative of the individual whose privacy interest is at issue, the department must withhold the requested information in its entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

²As our ruling is dispositive, we do not address your remaining claim.

Ref: ID# 493742

Enc. Submitted documents

c: Requestor
(w/o enclosures)