



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 20, 2013

Mr. John R. Batoon
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2013-20269

Dear Mr. Batoon:

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# 506407.

The El Paso Police Department (the "department") received a request for a specified report. You claim the submitted 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 "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 that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. 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* ORDs 393, 339; *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identities of witnesses to and victim of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information); ORD 440 (detailed descriptions of serious sexual offenses must be withheld). In this instance, the submitted information pertains to an alleged sex-related offense. Additionally, the requestor knows the identity of the alleged victim. Thus, withholding only the victim's identifying information from this requestor would not preserve the victim's common-law right to privacy. Accordingly, to protect the victim's privacy, the department must withhold the submitted information 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.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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/eb

Ref: ID# 506407

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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