



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 7, 2014

Mr. Peter Gruning
Counsel for the City of Lockhart
Law Offices of Peter Gruning, PLLC
P.O. Box 314
San Marcos, Texas 78667-0314

OR2014-02434

Dear Mr. Gruning:

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# 513399.

The Lockhart Police Department (the "department"), which you represent, received a request for all information in which the requestor is named as a suspect. You state the department has released some of the responsive information to the requestor. 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.

You state report number 20122070121 was the subject of a previous request for a ruling, in response to which this office issued Open Records Letter No. 2012-17905 (2012). In this prior ruling, we ruled the department must withhold the report under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based, we conclude the department must continue to rely on Open Records Letter No. 2012-17905 as a previous determination and withhold the report at issue in accordance with it.¹ See Open Records Decision No. 673 (2001) (so long as law, facts,

¹Because our ruling is dispositive, we do not address your remaining arguments against disclosure of this information.

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).

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 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). 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.

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) (identities of witnesses to and victims of sexual harassment were 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 in report number 2012060018. Therefore, we believe, in this instance, withholding only identifying information from the requestor would not preserve the victim’s common-law right to privacy. Accordingly, the department must withhold report number 2012060018 in its entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.²

In summary, the department must continue to rely on Open Records Letter No. 2012-17905 as a previous determination and withhold report number 20122070121 in accordance with it. The department must withhold report number 2012060018 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.

²Because our ruling is dispositive, we do not address your remaining arguments against disclosure of this information.

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,

A handwritten signature in black ink, appearing to read "Michelle R. Garza". The signature is fluid and cursive, with a large, stylized initial "M" and "G".

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 513399

Enc. Submitted documents

c: Requestor
(w/o enclosures)