



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 4, 2014

Ms. Tracie Reilly
Assistant City Attorney
Public Safety Legal Advisor
Legal Department
City of Amarillo
200 Southeast Third Avenue
Amarillo, Texas 79101-1514

OR2014-19951

Dear Ms.Reilly:

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# 542162 (Amarillo ref. No. 14-1423).

The Amarillo Police Department (the "department") received a request for all documents pertaining to a named individual, including information related to specified incidents. We understand the department has released some information to the requestor. 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.

Section 552.101 of the Government Code excepts from public 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 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. *See id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683. A compilation of an individual's criminal history is highly embarrassing information,

the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouses files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, requires the department to compile unspecified law enforcement records concerning the individual at issue. We find this request for unspecified law enforcement records implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy. However, we note you have submitted information pertaining to some of the specified incidents, as well as records that do not depict the named individual as a suspect, arrestee, or criminal defendant. Because this information is not part of a compilation of an individual's criminal history, the department may not withhold it under section 552.101 on that basis. However, we will address your remaining argument against disclosure of this information.

As discussed above, information protected by common-law privacy is subject to the two-part test discussed in *Industrial Foundation*. See *Indus. Found.*, 540 S.W.2d at 685. In Open Records Decision No. 393 (1983), this office concluded generally, only information that 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. ORD 393 at 2; 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 submitted information contains a report of sexual assault, and the requestor knows the identity of the alleged victim. Thus, we believe withholding only identifying information from this requestor would not preserve the victim's common-law right to privacy. Therefore, we find the department must withhold the report we have marked in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have not demonstrated how any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, none of the remaining information may be withheld under section 552.101 on that basis.

In summary, to the extent the department maintains law enforcement records not specified in the instant request depicting the named individual as a suspect, arrestee, or criminal

defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.

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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 542162

Enc. Submitted documents

c: Requestor
(w/o enclosures)