



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 14, 2015

Mr. Matt Ribitzki
Deputy City Attorney
City of Burleson
225 West Renfro Street
Burleson, Texas 76028

OR2015-09378

Dear Mr. Ribitzki:

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# 563532 (ORR No. 106).

The Burleson Police Department (the "department") received a request for information pertaining to a specified address, including reports involving the requestor and a named individual during a specified time frame. 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 "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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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 are highly intimate or embarrassing information and public does not have legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). Further, in those instances where it is demonstrated the requestor knows the identity of the victim, the entire report must be withheld to protect the victim's privacy.

Upon review, we find report number 14-001062 relates to a sexual assault. We note the requestor knows the identity of the alleged sexual assault victim. Accordingly, we believe that 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 report number 14-001062 in its entirety pursuant to section 552.101 in conjunction with common-law privacy. Further, you seek to withhold report number 13-003390 in its entirety. However, you have failed to demonstrate this is a situation in which the entirety of report number 13-003390 must be withheld. Thus, report number 13-003390 may not be withheld in its entirety under section 552.101 on the basis of common-law privacy. However, upon review, we find the information we marked in report number 13-003390 satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have not demonstrated the remaining information is highly intimate or embarrassing and of no legitimate public concern. Therefore, no portion of the remaining information may be withheld under section 552.101 on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release.¹ Gov't Code § 552.130. Upon review, we find the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold report number 14-001062 in its entirety and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold information we have marked

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

under section 552.130 of the Government Code. 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,

A handwritten signature in cursive script that reads "Britni Fabian".

Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 563532

Enc. Submitted documents

c: Requestor
(w/o enclosures)