



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 9, 2015

Ms. Linda A. Samples  
Assistant City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2015-25791

Dear Ms. Samples:

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# 589929 (EPD Ref. No. 15-1026-6676).

The El Paso Police Department (the "department") received a request for the basic information in a specified report. 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.

Initially, we note the requestor seeks only the basic information pertaining to the specified case. *See* Open Records Decision No. 127 (summarizing types of information considered to be basic information). The department has submitted information beyond the basic information. Thus, the portions of the submitted documents that do not consist of basic information are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release that information in response to the request. Thus, we only address your arguments for the requested basic information.

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 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.

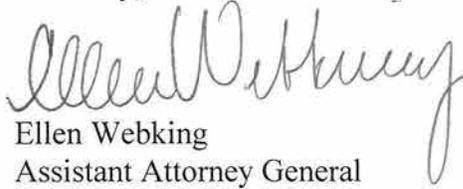
The responsive information pertains to a report of alleged sexual assault. In Open Records Decision No. 393 (1983), this office concluded generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. 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). 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. In this instance, you seek to withhold the entirety of the responsive information under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated, and we are not able to determine, the requestor knows the identity of the victim. Accordingly, the department may not withhold the entirety of the responsive information under section 552.101 of the Government Code on that basis. However, upon review, we find the identifying information of the complainant, who is the victim of sexual assault satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the information we have marked must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining responsive information is highly intimate or embarrassing and of no legitimate public interest. Thus, none of the remaining responsive information may be withheld under section 552.101 in conjunction with common-law privacy. As you do not raise any other exceptions to disclosure, the department must release the remaining responsive 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](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, appearing to read "Ellen Webking".

Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/akg

Ref: ID# 589929

Enc. Submitted documents

c: Requestor  
(w/o enclosures)