



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 7, 2016

Ms. Heather Silver
Assistant City Attorney
Office of the City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2016-00478

Dear Ms. Silver:

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# 593155 (ORR# 2015-16854).

The Dallas Police Department (the "department") received a request for information relating to a specified incident. The department claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have

¹The department states it failed to comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code 552.301. Regardless of whether the department complied with section 552.301, we note the interests under section 552.108 of the Government Code of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure. *See id.* §§ 552.007, .302, .352; *see also* Open Records Decision No. 586 at 2-3 (1991). Accordingly, we will consider the applicability of section 552.108 to the submitted information based on the interests of the Dallas County District Attorney's Office. Further, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider this exception for the submitted information. *See* Gov't Code §§ 552.007, .302, .352.

considered the exceptions the department claims and reviewed the submitted representative sample of information.²

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.

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 requestor in this case knows the identity of the alleged victim. We believe in this instance, withholding only identifying information from the requestor would not preserve the victim’s common-law right to privacy. Therefore, we conclude the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.³

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/>

²We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

³As our ruling is dispositive, we need not address the department’s remaining argument against disclosure.

[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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 593155

Enc. Submitted documents

c: Requestor
(w/o enclosures)