



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 15, 2006

Mr. Ernesto Rodriguez  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901

OR2006-01478

Dear Mr. Rodriguez:

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# 242333.

The El Paso Police Department (the "department") received a request for a specific case file involving two named individuals. You state that the department has released a portion of the requested information. You claim that the remaining requested 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.

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 (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public

disclosure under common law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

In this case, Exhibit B pertains to an investigation of an alleged sexual assault. 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, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decisions Nos. 393 (1983), 339 (1982); *see also* Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld); *cf. 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 legitimate interest in such information).

In this instance, the requestor knows the identity of the alleged victim of sexual assault. We note, however, that the requestor may be the authorized representative of the alleged victim. If the requestor is not the authorized representative of the alleged victim, then the department must withhold the submitted information in its entirety pursuant to section 552.101 in conjunction with common law privacy. If the requestor is the authorized representative of the alleged victim, he has a right of access to the information contained in Exhibit B under section 552.023 of the Government Code, and the information may not be withheld pursuant to common law privacy.<sup>1</sup> To the extent the requestor has a special right of access to private information, we address your remaining arguments.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the information at issue pertains to a case that is closed and concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is generally applicable to Exhibit B.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information

---

<sup>1</sup>*See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself).

refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87. Basic information normally includes the identification and description of the complainant. Open Records Decision No. 127 (1976).<sup>2</sup> Thus, with the exception of the basic front page offense and arrest information, you may withhold the information in Exhibit B from disclosure pursuant to section 552.108(a)(2). Although section 552.108(a)(2) authorizes you to withhold the remaining information in Exhibit B from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. See Gov't Code § 552.007.

We note that the remaining submitted information in Exhibit C consists of medical records, access to which is governed by the Medical Practice Act ("MPA"), chapter 159 of the Occupation Code. Section 159.002 of the MPA provides as follows:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002. The medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *Id.* §§ 159.004, .005. Section 159.0029(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the records subject to the MPA. If the requestor is the authorized representative of the individual to whom the marked information pertains, he may have a right of access to that information. The information that is subject to the MPA may only be released in accordance therewith.

In summary, if the requestor does not have a special right of access to the information contained in Exhibit B, the information at issue must be withheld in its entirety under

---

<sup>2</sup>We note that if the department receives another request for this information from a person who would not have a special right of access to this information, the department should resubmit this same information and request another decision from this office. See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).

section 552.101 of the Government Code in conjunction with common law privacy. If the requestor has a special right of access, then the department must release basic information but may withhold the remaining information contained in Exhibit B pursuant to section 552.108(a)(2) of the Government Code. The marked medical records in Exhibit C may only be released in accordance with the MPA.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Candice M. De La Garza". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Candice M. De La Garza  
Assistant Attorney General  
Open Records Division

CMD/krl

Ref: ID# 242333

Enc. Submitted documents

c: Mr. Brett Duke  
The Law Offices of Brett Duke, P.C.  
4157 Rio Bravo  
El Paso, Texas 79902  
(w/o enclosures)