



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 27, 2007

Ms. Sandy Dudley
Records Coordinator
City of Cleburne
P. O. Box 677
Cleburne, Texas 76033

OR2007-17012

Dear Ms. Dudley:

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 #298334.

The Cleburne Police Department (the "department") received a request for all information pertaining to a named individual and a specified sexual assault investigation. You state that you have released a portion of the requested information to the requestor. You claim that portions of the submitted police report and accompanying information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor's agency, the Texas Education Agency (the "TEA"). See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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. For information to be protected from public disclosure under common-law privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Information must be withheld from the public when (1) it is highly intimate and embarrassing

such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). 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. You have highlighted the identifying information of a victim of alleged sexual assault that you assert is protected under common-law privacy and must be withheld. We agree that this identifying information is generally subject to common-law privacy. *See* Open Records Decision No. 393 (1983) (holding that sexual assault victim's identifying information subject to common-law privacy). However, you have failed to demonstrate applicability of common-law privacy to any of the remaining information at issue.

Section 22.082 of the Education Code provides that the TEA “may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under Subchapter B, Chapter 21.” Edu. Code § 22.082. In this instance, the requestor is a staff investigator with the TEA who states that the TEA is conducting an investigation of an individual who has applied for or currently holds educator credentials. You state that you have released most of the submitted police report to the requestor pursuant to section 22.082 of the Education Code. Thus, we presume from your statement that the information at issue pertains to a closed criminal investigation. Therefore, in this instance, there would be a conflict of laws between section 22.082 of the Education Code and section 552.101 used in conjunction with common-law privacy. We hold that the right of access afforded to TEA investigators under section 22.082 prevails over common-law privacy. *See* Open Records Decision No. 623 at 3 (1994) (ruling that as a general rule, the exceptions to required public disclosure provided in the Act are not applicable to information that a statute other than the Act expressly makes public). Accordingly, the department must release the submitted information in its entirety to the requestor.¹

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 file suit in

¹We note that because the requestor has a special right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 298334

Enc. Submitted documents

c: Ms. Tracy Thomas
Staff Investigator
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(w/o enclosures)