



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2008

Ms. Sandy Dudley
Records Coordinator
City of Cleburne
P.O. Box 677
Cleburne, Texas 76033-0677

OR2008-05396

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# 309915.

The City of Cleburne (the "city") received a request for a specified case number. You claim that 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 from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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. The submitted incident report relates to an alleged sexual assault. Generally, only information tending to identify victims of serious sexual offenses is protected by common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

In this instance, the requestor knows the identity of the alleged victim and the nature of the incident; thus, withholding only the identifying information from the requestor would not preserve the victim's common-law right to privacy. Therefore, the city would generally withhold the submitted documents in their entirety.

We note, however, that the requestor may be the legal guardian of the individual whose privacy is implicated by the release of the information at issue. If the requestor is the legal guardian of the alleged victim, the requestor has a special right of access to the submitted information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is confidential by privacy principles). Thus, if requestor is the legal guardian of the individual, the submitted information may not be withheld from her under section 552.101 in conjunction with common-law privacy.¹ Because we are unable to determine from the information submitted whether the requestor is the legal guardian of the alleged victim, we make the following determination: if the city determines that the requestor is the legal guardian of the alleged victim, the city must release the submitted information to the requestor. If the city determines that the requestor does not have a right of access, then the city must withhold the submitted report in its entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

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 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

¹*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 person asks governmental body for information concerning himself or herself).

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,



Jessica J. Maloney
Assistant Attorney General
Open Records Division

JJM/jh

Ref: ID# 309915

Enc. Submitted documents

c: Ms. Lorraine Manning
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Granbury, Texas 76049
(w/o enclosures)