



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 18, 2008

Ms. Cathy Duhart
Custodian of Records
Sinton Police Department
217 East Market
Sinton, Texas 78387

OR2008-08371

Dear Ms. Duhart:

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# 313106.

The Sinton Police Department (the "department") received a request for information relating to a specified case. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

We first note that information relating to the case in question was the subject of Open Records Letter No. 2007-12123 (2007), in which we concluded that the submitted information was confidential in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. You do not indicate that there has been any change in the law, facts, and circumstances on which our previous ruling is based. Therefore, to the extent that the submitted information was the subject of Open Records Letter No. 2007-12123, the department must continue to withhold the submitted information on the basis of the previous ruling. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)). To the extent that the submitted information was not the subject of Open Records Letter No. 2007-12123, we will address your arguments against its disclosure.

We next note that some of the submitted information is contained in court records and thus is subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). We have marked information contained in court records that is subject to section 552.022(a)(17). Although you seek to withhold the marked information on privacy

grounds under section 552.101, we note that common-law privacy is not applicable to information contained in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (sexual assault victim's privacy right not violated by release of information in public court document). We therefore conclude that the department may not withhold any of the information contained in the marked court records under section 552.101 in conjunction with common-law privacy. As you do not assert the applicability of any other law that would make the court records confidential for the purposes of section 552.022, those documents must be released.

Turning to the remaining information, section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Section 261.201 of the Family Code provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family Code] and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find that some of the submitted information, which we have marked, consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Fam. Code ch. 261). As you do not indicate that the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, we conclude that the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

Section 552.101 also encompasses common-law privacy and excepts from disclosure private facts about an individual. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Information is excepted from required public disclosure by a common-law right

¹We note that if the Texas Department of Family and Protective Services has created a file on this case, the child's parent(s) may have the statutory right to review the file. *See* Fam. Code § 261.201(g).

to privacy if the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and the information is not of legitimate concern to the public. *See id.* at 685.

Generally, only the information that either identifies or tends to identify a victim of a sexual assault or another 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 Decision Nos. 393 (1983), 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 that was not a matter of legitimate public interest); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). In this instance, the rest of the submitted information is related to an alleged sexual offense, and the requestor knows the identity of the alleged victim. Under these circumstances, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. We therefore conclude that the department must withhold the rest of the submitted information under section 552.101 in conjunction with common-law privacy.

In summary, to the extent that the submitted information was the subject of Open Records Letter No. 2007-12123, the department must continue to withhold the information on the basis of the previous ruling. To the extent that the submitted information was not the subject of the previous ruling: (1) the department must release the marked information that is subject to section 552.022(a)(17) of the Government Code; (2) the department must withhold the marked information that is confidential under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; and (3) the department must withhold the rest of the submitted information under section 552.101 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). If the governmental body does not file suit over 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).

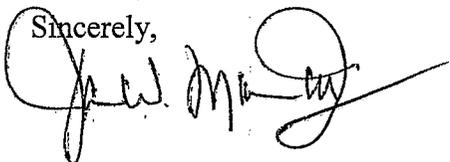
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ma

Ref: ID# 313106

Enc: Submitted documents