



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2008

Chief Kenneth W. Findley
City of Deer Park
P.O. Box 700
Deer Park, Texas 77536-0700

OR2008-12396

Dear Chief Findley:

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# 324947.

The Deer Park Police Department (the "department") received a request for all reports related to a specified address between two particular time periods.¹ You state that you have provided the requestor with some of the requested information. 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.

Initially, you inform us that submitted reports 2005-5485 and 2008-1553 were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-05957 (2008). In that ruling, we concluded that the department must withhold report number 2008-1553 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed in regards to report number 2008-1553, the department must continue to rely on that ruling as a previous determination and withhold report number 2008-1553 in accordance with Open Records Letter No. 2008-05957. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type

¹We understand that the department received clarification from the requestor. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we note that circumstances have changed in regard to the application of common-law privacy in report number 2005-5485. As such, the prior ruling may not be relied upon as a previous determination for report number 2005-5485. Therefore, we will consider your arguments against disclosure for this 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 exception encompasses the doctrine of common-law privacy, which protects information that (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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered to be intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances where it is demonstrated that the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

In the instance of report number 2005-5485, the request reflects that the requestor knows the identity of the individual involved as well as the nature of the submitted information. Therefore, withholding only the identity of the individual involved or certain details of the incident from the requestor would not preserve the individual's common-law right to privacy. Accordingly, to protect the privacy of the individual to whom the information pertains, the department must withhold all of report number 2005-5485 under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must continue to rely on our ruling in Open Records Letter No. 2008-05957 with respect to report number 2008-1553. The department must withhold report number 2005-5485 under 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). 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,



Emily Sitton
Assistant Attorney General
Open Records Division

EBS/eeg

Ref: ID# 324947

Enc. Submitted documents

c: Ms. Lisa Culbert
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(w/o enclosures)