



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 12, 2009

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2009-06408

Dear Ms. Sandoval-Walker:

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# 342854.

The El Paso Police Department (the "department") received a request for information involving assault, a named individual, and either of two specified dates. You have submitted information that the department seeks to withhold under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note that, according to the submitted police report, the department appears to be in possession of additional information relating to an assault involving the named individual that occurred on one of the specified dates. You have not submitted any information that relates specifically to that incident, however, and you do not indicate that any such information is responsive to the instant request. Nevertheless, the department must release any information relating to that incident that is responsive to this request, to the extent that such information existed when the department received the request, unless the department has already done so.¹ See Gov't Code §§ 552.006, .221, .301, .302; Open Records Decision No. 664 (2000).

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Next, we address your arguments against disclosure of 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. You raise section 552.101 in conjunction with common-law privacy, which excepts from disclosure private facts about an individual.² 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 of privacy if the information (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. *Id.* at 685. In Open Records Decision No. 393 (1983), this office concluded that generally only that 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, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; see Open Records Decision No. 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, and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

You state that the submitted information is related to an alleged sexual assault. You seek to withhold all of the information at issue under section 552.101 in conjunction with common-law privacy. You have not demonstrated, however, and it does not otherwise appear to this office that the instant request presents an instance in which all of the information must be withheld on that basis. Instead, we conclude that only the submitted information that identifies the victim of the alleged sexual assault is protected by common-law privacy. See ORD 393, 339. The department must withhold that information, which we have marked, under section 552.101. The department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

We note that section 552.130 of the Government Code is applicable to some of the remaining information.³ Section 552.130 excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state. See Gov't Code

²You also assert that the submitted information is excepted under section 552.101 in conjunction with "a statutory grant of confidentiality, a judicial grant of confidentiality . . . and a constitutional right of privacy." However, you have provided no demonstration of the existence of any basis, other than common-law privacy, to withhold the submitted information. Accordingly, this decision addresses only your common-law privacy claim under section 552.101. See Gov't Code § 552.301(e)(1)(A) (governmental body must submit written comments demonstrating applicability of claimed exception to information at issue).

³Unlike other exceptions to disclosure under the Act, this office will raise section 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

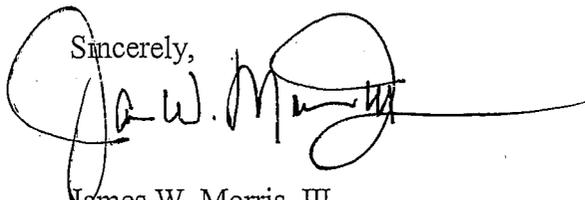
§ 552.130(a)(2). We have marked Texas motor vehicle registration information that the department must withhold under section 552.130.

In summary, the department must withhold the information that we have marked under sections 552.101 and 552.130 of the Government Code. The rest of the submitted information must be released.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

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

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

JWM/cc

Ref: ID# 342854

Enc: Submitted documents

c: Requestor
(w/o enclosures)