



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 23, 2009

Ms. Sylvia McClellan  
Assistant City Attorney  
City of Dallas  
Criminal Law and Police Section  
1400 South Lamar  
Dallas, Texas 75215

OR2009-08624

Dear Ms. McClellan:

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# 347887 (Open Records Request 2009-3027).

The Dallas Police Department (the "department") received a request for a particular police report from April 1, 2008 involving two named individuals and investigated by a named detective. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to disclosure under section 552.022 of the Government Code. Section 552.022(a)(1) provides for required disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). In this instance, the submitted information consists of a completed report. Although you seek

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<sup>1</sup>We note although the department also raises sections 552.108, 552.111, 552.117, 552.1175, 552.127, 552.130, 552.136, and 552.137 of the Government Code, the department makes no arguments to support these exceptions. Therefore, we assume the department has withdrawn its claim that these sections apply to the submitted information

to withhold the submitted information under section 552.103 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 473 (1987) (governmental body may waive section 552.103). As such, section 552.103 is not other law that makes information expressly confidential for purposes of section 552.022. Therefore, the department may not withhold the submitted information under section 552.103. However, we will determine whether the information may be withheld under section 552.101 because section 552.101 is other law that makes information confidential.

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, 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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 assert the submitted report involves a claim of sexual harassment and seek to withhold the submitted information under section 552.101 in conjunction with common-law privacy. *See Morales v. Ellen*, 840 S.W.2d 519, 525 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate and embarrassing information and public did not have a legitimate interest in which information). However, upon review, we find the department did not conduct a sexual harassment investigation. In addition, the department did not receive a sexual harassment complaint against the department. The submitted incident report pertains to found property and you have failed to demonstrate how any of the submitted information constitutes highly intimate or embarrassing information, the release of which would be highly objectionable to a reasonable person. Therefore, the department may not withhold the submitted information under section 552.101 in conjunction with common-law privacy, and 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](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 'E. Sitton', written in a cursive style.

Emily Sitton  
Assistant Attorney General  
Open Records Division

EBS/rl

Ref: ID# 347887

Enc. Submitted documents

c: Requestor  
(w/o enclosures)