



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 17, 2009

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

OR2009-11476

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# 352372 (DPD Request Number: 2009-4370).

The Dallas Police Department (the "department") received a request for reports or calls involving a named individual during a specified period of time. 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of

information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

In this instance, the request is for all reports and calls pertaining to a named individual during a specified time period. We find that this request requires the department to compile unspecified law enforcement records concerning the named individual. Such a request implicates the named individual's privacy rights. Thus, to the extent the department maintains law enforcement records depicting the named individual as either a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, you have submitted information that does not relate to the named individual as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of the named individual, so we will address your arguments against the disclosure of this information.

You argue that report number 0261451-V is protected by common-law privacy in its entirety because the information identifies an alleged sexual assault victim. As noted above, common-law privacy protects the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (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). Generally, only the 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, 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 Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). In this instance, the requestor knows the identity of the alleged sexual assault victim listed in the report. Thus, the report number 0261451-V must be withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Furthermore, in certain instances, where the requestor knows the identity of the individual at issue and the nature of the incident, the entire report must be withheld to protect the individual's privacy. Here, although you also seek to withhold report number 0241821-V in its entirety, you have not demonstrated, nor does it otherwise appear, that this is a situation where the entire report must be withheld on the basis of common-law privacy. However, upon review, we agree that some of the remaining submitted information is highly intimate and embarrassing and of no legitimate public interest. Therefore, the department must withhold the information you have marked in report number 0241821-V under section 552.101 in conjunction with common-law privacy. However, no portion of the

remaining information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the department maintains law enforcement records depicting the named individual as either a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold report number 0261451-V in its entirety, as well as the information you have marked in report number 0241821-V, under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining 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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

Ref: ID# 352372

Enc. Submitted documents

c: Requestor
(w/o enclosures)