



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2010

Ms. Diana Davis
Records Clerk
City of Harker Heights
402 Indian Trail
Harker Heights, Texas 76548

OR2010-00150

Dear Ms. Davis:

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# 366302.

The City of Harker Heights (the "city") received a request for police reports from a specified address pertaining to the requestor. You state you have released some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

Gov't Code § 552.022(a)(1). The submitted information contains completed incident reports. Pursuant to section 552.022(a)(1) of the Government Code, a completed report is expressly public unless it is either excepted under 552.108 of the Government Code or is expressly confidential under other law. Section 552.103 of the Government Code is a discretionary exception that protects a governmental body's interest and may be waived. *See 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 section 552.103); Open Records Decision No. 552

(1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, 552.103 is not other law that makes information confidential for the purposes of section 552.022. Consequently, the completed reports may not be withheld under section 552.103 of the Government Code. However, because information subject to section 552.022(a)(1) may be withheld under sections 552.101 and 552.108, we will consider the applicability of these exceptions to the completed reports.

You state a portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code. 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 section 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 types 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. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which 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. Open Records Decision No. 393 at 2 (1983); *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). Report number 09-2876 pertains to an alleged sexual assault. The requestor in this case knows the identity of the alleged victim listed in the report. We believe that, in this instance, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, we conclude that the city must withhold report number 09-2876 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 301(e)(1)(A); *see also* *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information in Enclosure 2 relates to a pending prosecution in the city attorney's office. However, you

failed to identify Enclosure 2. Further, the remaining information consists of two separate reports. It is not clear to this office which report pertains to a pending prosecution nor do you otherwise demonstrate how release of any of the remaining information would interfere with law enforcement and crime prevention. Because you have failed to explain the applicability of section 552.108 to the remaining information, the city may not withhold any portion of the remaining information under section 552.108 of the Government Code.

In summary, the city must withhold report number 09-2876 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released to the requestor.

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, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/jb

Ref: ID# 366302

Enc. Submitted documents

cc: Requestor
(w/o enclosures)