



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 24, 2010

Ms. Mary Azam
Georgetown Police Department
809 Martin Luther King, Jr. Street
Georgetown, Texas 78626

OR2010-02763

Dear Ms. Azam:

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# 371057 (GT #'s 725, 737, and 738).

The Georgetown Police Department (the "department") received three requests from two requestors for information relating to two specified incidents. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

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 common-law privacy and excepts from disclosure private facts about an individual. *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).

In this instance, the submitted information involves two alleged sexual assaults. Moreover, the individual who submitted request number 725 (the “first requestor”) knows the names of the victims of the alleged offenses. We believe that, in this instance, withholding only identifying information from the first requestor would not preserve the victims’ common-law rights to privacy. We therefore conclude that the department must withhold all of the submitted information from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

We note that the individual who submitted request numbers 737 and 738 (the “second requestor”) does not appear to know the victims’ identities. Therefore, the submitted information may not be withheld from the second requestor in its entirety under section 552.101 in conjunction with common-law privacy. Nevertheless, the submitted information that identifies the victims must be withheld from the second requestor on that basis. *See* ORD 393, 339. We have marked that information. The rest of the submitted information may not be withheld from the second requestor under section 552.101 on privacy grounds and must be released.

We also note that the second requestor identifies herself as an investigator for the Texas Department of Aging and Disability Services (“DADS”). Pursuant to the interagency transfer doctrine, information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinion No. GA-0055 (2003); Open Records Decision Nos. 680 at 7 (2003), 667 at 3-4 (2000). An interagency transfer of confidential information is prohibited, however, where a confidentiality statute enumerates specific entities to which release of confidential information is authorized, and the requesting agency is not among the statute’s enumerated entities. *See* Attorney General Opinion DM-353 at 4 n.6 (1995); Open Records Decision No. 661 at 3 (1999). Common-law privacy is not a confidentiality statute that enumerates specific entities to which the release of confidential information is authorized. Thus, although the marked information that identifies the victims of the alleged sexual assaults is protected by common-law privacy, the department may release that information to the second requestor as a representative of DADS pursuant to the interagency transfer doctrine.

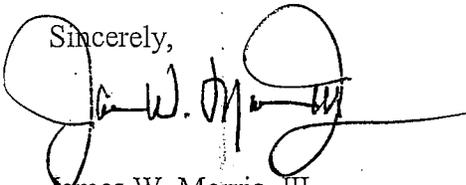
In summary: (1) the submitted information must be withheld from the first requestor in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the marked information that identifies the victims of the alleged sexual assaults must be withheld from the second requestor under section 552.101 in conjunction with

common-law privacy; (3) the rest of the submitted information must be released to the second requestor; and (4) although the marked information that identifies the victims is protected by common-law privacy, the department may release that information to the second requestor as a representative of DADS pursuant to the interagency transfer doctrine.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is stylized with large loops and a long horizontal stroke extending to the right.

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

JWM/cc

Ref: ID# 371057

Enc: Submitted documents

c: Requestors
(w/o enclosures)