



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 1, 2010

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

OR2010-04629

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# 377701.

The El Paso Police Department (the "department") received a request for information relating to a specified incident. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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 is related to an investigation of an alleged sexual assault, and the requestor knows the identity of the alleged victim. Under these circumstances, withholding only the victim's identity would not preserve her common-law privacy. Thus, the department would ordinarily be required to withhold all of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

In this instance, however, the requestor is a representative of the Adult Protective Services division of the Texas Department of Family and Protective Services ("DFPS").<sup>1</sup> Under chapter 48 of the Human Resources Code, the duties of DFPS include investigation of abuse, neglect, or exploitation in the provision of services to an elderly or disabled person. *See* Hum. Res. Code §§ 48.151, .152. Section 48.154 of the Human Resources Code provides in part:

(a) The [DFPS] or state agency, as appropriate, shall have access to any records or documents, including client-identifying information and medical and psychological records, necessary to the performance of the [DFPS]'s or state agency's duties under this chapter. The duties include but are not limited to the investigation of abuse, neglect, or exploitation or the provisions of services to an elderly or disabled person. A person or agency that has a record or document that the [DFPS] or state agency needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to the [DFPS] or agency.

*Id.* § 48.154(a). The request for information reflects the requestor seeks the submitted information for purposes of an Adult Protective Services investigation. Consequently, we understand that DFPS is in need of this information in order to perform its duties under chapter 48 of the Human Resources Code, which include investigation of abuse, neglect, or exploitation of a disabled person. *See id.* §§ 48.151, .152. Thus, because the requestor is seeking information needed to perform the duties of DFPS under chapter 48, the requestor has a right of access to the submitted information under section 48.154 of the Human Resources Code. Although the information at issue is confidential under common-law privacy, a statutory right of access generally prevails over the common law. *See Gallagher Headquarters Ranch Dev., Ltd. v. City of San Antonio*, 269 S.W.3d 628, 637 (Tex. App.—San Antonio 2008, pet. filed) (when statute directly conflicts with common-law principle or claim, statutory provision controls and preempts common law; legislature may enact legislation that preempts or supersedes common-law principle). Therefore, because the requestor's statutory right of access prevails over common-law privacy, none of the submitted information may be withheld on privacy grounds.

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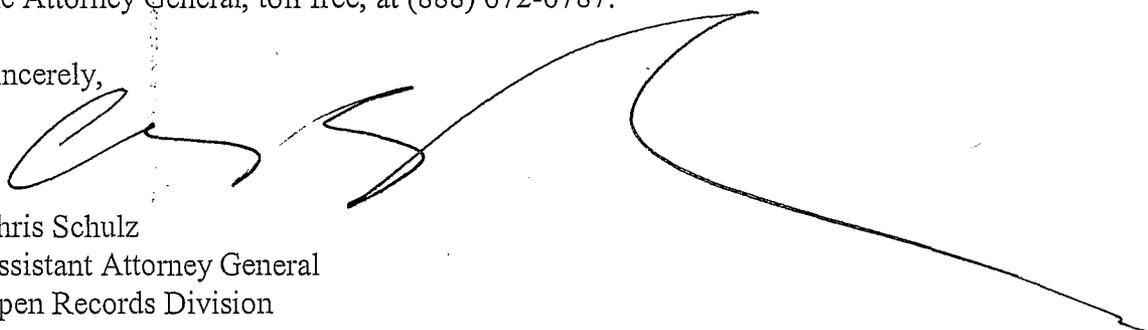
<sup>1</sup>*See* Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Gen. Laws 611, 641 ("A reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.").

The department also seeks to withhold the submitted information under section 552.108 of the Government Code.<sup>2</sup> Additionally, the submitted information includes social security numbers that may ordinarily be withheld under section 552.147 of the Government Code.<sup>3</sup> These sections, however, are general exceptions to disclosure under the Act. A statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Thus, because the requestor's statutory right of access prevails over sections 552.108 and 552.147, the department may not withhold any of the submitted information on the basis of either of those exceptions. Accordingly, the submitted information must be released to the requestor.<sup>4</sup>

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

Sincerely,



Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

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<sup>2</sup>Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime ...if ... release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1).

<sup>3</sup>Section 552.147 provides in part that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a).

<sup>4</sup>Because the requestor has a special right of access under section 48.154 to information that would ordinarily be protected by section 552.101 of the Government Code, the department must request another ruling if it receives a request for this same information from another requestor. *See* Gov't Code §§ 552.301, .302.

Ref: ID# 377701

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)