



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 29, 2010

Ms. Jennifer C. Cohen
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2010-09576

Dear Ms. Cohen:

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# 385170 (DPS ORA# 10-0885).

The Texas Department of Public Safety (the "department") received a request for all records pertaining to the investigation into the allegations of a specified sexual assault. You state the department will provide some of the requested information to the requestor. You claim portions of the submitted incident report are 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. This section encompasses information other statutes make confidential, such as section 1703.306 of the Occupations Code, which provides:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;

(3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;

(4) another polygraph examiner in private consultation; or

(5) any other person required by due process of law.

(b) The [Polygraph Examiners] Board or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. You have marked the information you claim is excepted under section 1703.306. You state the requestor does not fall into any of the categories of individuals who are authorized to receive the polygraph information under section 1703.306(a). Upon review, we agree some of the marked information was acquired from a polygraph examination and is, therefore, within the scope of section 1703.306. Accordingly, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. You have failed to demonstrate, however, how the remaining information you seek to withhold was acquired from a polygraph examination. Thus, this information, which we have marked, may not be withheld under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. As you have not claimed any other exceptions to disclosure for this information, it must be released.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. 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). Upon review, we agree most of the information you marked identifies an alleged sexual assault victim. Thus, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate how the remaining information you seek to withhold, including the alleged victim's date of birth,

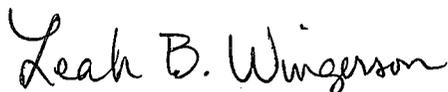
friend's name, and type of vehicle, identifies or tends to identify the alleged sexual assault victim. Thus, the remaining information at issue, which we have marked, may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. As you have claimed no other exceptions to disclosure for this information, it must be released.

In summary, with the exception of the information marked for release, the department must withhold the marked polygraph information under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. With the exception of the information marked for release, the department must withhold the information marked 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, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 385170

Enc. Submitted documents

c: Requestor
(w/o enclosures)