



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2010

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County District Attorney's Office
401 West Belknap
Fort Worth, Texas 76196-0201

OR2010-12081

Dear Ms. Fourt:

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# 389965.

The Tarrant County Sheriff's Department (the "department") received a request for information pertaining to a named individual, including information pertaining to a specified incident. You indicate that the department does not have any information pertaining to the specified incident.¹ 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 submitted information.

Section 552.101 of the Government Code excepts from disclosure "information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy. Common-law privacy 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found that 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. U.S. 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

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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. However, information that refers to an individual solely as a victim, witness, or involved person is not private and may not be withheld under section 552.101 on that basis.

In this instance, the request is for information pertaining to a named individual. Thus, this request requires the department to compile the named individual's criminal history. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy as a compilation of the named individual's criminal history.

We note that you have submitted information pertaining to case number 2005-11939, an incident where the named individual is not listed as a suspect, arrestee, or criminal defendant. Because this information does not list the named individual as a suspect, arrestee, or criminal defendant, it does not implicate the privacy interests of the named individual as a compilation of her criminal history and may not be withheld under section 552.101 in conjunction with common-law privacy on that basis. However, we will address your argument that this information is otherwise excepted under section 552.101 in conjunction with common-law privacy.

The type 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. *Indus. Found.*, 540 S.W.2d at 683. Generally, only 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. See Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). 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 ORD 393, 339; see also ORD 440 (detailed descriptions of serious sexual offenses must be withheld). In this instance, the request for information indicates that the requestor knows the identity of the alleged sexual assault victim listed in case number 2005-11939. Thus, withholding only the victim's identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, to protect the victim's privacy, the information pertaining to case number 2005-11939 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.²

²As our ruling is dispositive, we need not address your argument against the disclosure of this information.

In summary, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of the named individual's criminal history. The department must withhold the information pertaining to case number 2005-11939 under section 552.101 of the Government Code in conjunction with common-law privacy.

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_ori.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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 389965

Enc. Submitted documents

c: Requestor
(w/o enclosures)