



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 12, 2010

Mr. Robert Reyna
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2010-12282

Dear Mr. Reyna:

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# 390515 (COSA File No. 2010-5925).

The San Antonio Police Department (the "department") received a request for information related to a specified incident. You claim that the submitted 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 considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses common-law privacy which 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 to privacy if the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and the information is not of legitimate concern to the public. *See id.* at 685.

Generally, only the information that either identifies or tends to identify a victim of a sexual assault or another sex-related offense may be withheld under common-law privacy. 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* Open Records Decision Nos. 393 (1983), 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 that was not a matter of legitimate public interest); 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 alleged sexual offense, and the requestor knows the identity of the alleged victim. Under these circumstances, 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 privacy of the individual to whom the information relates, we find the entire report is subject to common-law privacy and must generally be withheld under section 552.101 of the Government Code.

We note, however, the requestor is an investigator at the Texas Department of Aging and Disability Services ("DADS"). The interagency transfer doctrine provides that 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). However, an interagency transfer of confidential information is prohibited 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 does not consist of a confidentiality statute that enumerates specific entities to which release of the confidential information is authorized. Thus, under the interagency transfer doctrine the department has the discretion to release to DADS the submitted information that is confidential under common-law privacy.

In summary, pursuant to the interagency transfer doctrine, the department has the discretion to release the submitted information in its entirety. However, should the department choose not to exercise its discretion under the interagency transfer doctrine, the department must withhold the submitted information in its entirety pursuant to section 552.101 in conjunction with common-law privacy.¹

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.

¹As our ruling is dispositive, we need not address your argument under section 552.108 of the Government Code.

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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 390515

Enc. Submitted documents

c: Requestor
(w/o enclosures)