



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 20, 2010

Ms. Rebecca Brewer  
Abernathy, Roeder, Boyd, & Joplin, P.C.  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2010-12720

Dear Ms. Brewer:

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# 391235.

The Wylie Police Department (the "department"), which you represent, received two requests for information pertaining to a specified incident involving a named individual. You claim that some of the requested information is not subject to the Act. You also claim the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note most of the information in Exhibit C is not responsive to the instant request because it does not pertain to the incident at issue in the requests. The department need not release nonresponsive information in response to this request, and this ruling will not address that information.

Next, you claim the information in Exhibit B is not public information subject to the Act. The Act is only applicable to "public information." *See* Gov't Code § 552.021. Section 552.002(a) defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if it is maintained for a governmental body, the governmental body owns or has a right of access to the information, and the information pertains to the transaction of official business. *See* Open Records Decision No. 462 (1987).

You state the information in Exhibit B was not collected, assembled, or maintained in connection with the transaction of any official business of the department. We note the information at issue relates to a criminal investigation conducted by the department. Therefore, we find this information was created, assembled, or maintained in connection with the transaction of official business. Accordingly, Exhibit B constitutes "public information" as defined by section 552.002(a) and is subject to the Act. Thus, Exhibit B is subject to the Act and must be released, unless it falls within the scope of an exception to disclosure. Gov't Code § 552.002(a)(1), .021.

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. Section 552.101 encompasses the doctrine of common-law privacy, which 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. *See id.* at 681-82. 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Although we understand you to argue that the present request requires the department to compile an individual's criminal history, the request is for information pertaining to a specified incident, not all criminal records involving a person. Therefore, the department may not withhold any portion of the requested information as a compilation of a private citizen's criminal history.

Common-law privacy also encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. The type of information considered intimate or 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. v. Tex. Indus. Accident Bd.*, 540 S.W.2d at 683.

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

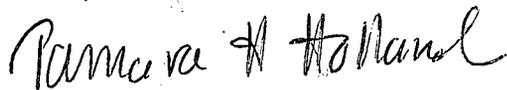
highly intimate or embarrassing information, and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

The submitted information involves an alleged sexual assault, and the requestors know the identity of the alleged victim. We believe that, in this instance, withholding only identifying information from the requestors would not preserve the victim's common-law right to privacy. We therefore conclude that the department must withhold all of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. As our ruling is dispositive, we need not address your remaining arguments.

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,



Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/jb

Ref: ID# 391235

Enc. Submitted documents

c: Requestor  
(w/o enclosures)