



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 24, 2010

Ms. Lizbeth Islas Plaster
Assistant City Attorney
City of Lewisville
P.O. Box 299002
Lewisville, Texas 75029

OR2010-14540

Dear Ms. Plaster:

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# 394916 (City PIA no. 10-415).

The Lewisville Police Department (the "department") received a request for internal affairs investigation file number 2010-13. You claim the submitted internal affairs file is 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 common law privacy and excepts from disclosure private facts about an individual. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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) the information is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d 668.

In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other serious 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). Additionally, in those instances where it is demonstrated the requestor knows the identity of the victim, the entire report must be withheld to protect the victim's privacy.

In this case, although the submitted information pertains to an internal affairs investigation, this administrative investigation closely parallels, and reveals details about, a criminal investigation involving allegations of a serious sex-related offense. The requestor in this case knows the identity of the alleged victim. Therefore, we believe that withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy in this instance. Accordingly, the department must withhold the submitted internal affairs file in its entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. As our ruling is dispositive, we need not address your argument against disclosure.

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tp

Ref: ID# 394916

Enc. Submitted documents

c: Requestor
(w/o enclosures)