



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 3, 2010

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

OR2010-16694

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# 399127 (COSA File No. 2010-6455).

The City of San Antonio (the "city") received a request for the investigation report for case number 00534335. You claim the submitted information 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 exception encompasses common-law privacy and 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 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) is not of legitimate concern to the public. *Id.* at 685.

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).

In this instance, the submitted information involves an alleged sexual assault. Although you claim the submitted information should be withheld in its entirety, you do not provide any arguments establishing that the requestor in this instance knows the identity of the victim of the alleged offense. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must provide reasons why the stated exceptions apply). Therefore, you failed to demonstrate the submitted information is protected in its entirety under section 552.101 in conjunction with common-law privacy. Nevertheless, the submitted information that identifies the victim, which we have marked, must be withheld from the requestor under section 552.101 in conjunction with common-law privacy. *See* ORD 393, 339. The remaining submitted information may not be withheld from the requestor under section 552.101 and must be released.

We note, however, the requestor is an investigator at the Texas Department of Aging and Disability Services ("DADS"). The requestor claims certain information must be released to her as a DADS investigator. However, the requestor does not cite to any state or federal statute that would permit DADS access to the submitted department records in this instance. Thus, we conclude DADS has failed to demonstrate it has any statutory right of access to the information at issue.

However, 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). The victim's identifying information is protected by common-law privacy, not a confidentiality statute that enumerates specific entities to which release of the confidential information is authorized. Thus, under the interagency transfer doctrine the city has the discretion to release to DADS the portions of the submitted information that are confidential under common-law privacy.

In summary, pursuant to the interagency transfer doctrine, the city has the discretion to release the submitted information in its entirety. However, should the city choose not to exercise its discretion under the interagency transfer doctrine, the city must withhold the

information we marked pursuant to 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\\_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,

A handwritten signature in black ink, appearing to read 'Bob Davis', with a large, stylized flourish extending to the right.

Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/tp

Ref: ID# 399127

Enc. Submitted documents

c: Requestor  
(w/o enclosures)