



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 8, 2010

Ms. Julie Ann Stewart
Kleberg County Sheriff's Office
P.O. Box 1360
Kingsville, Texas 78363

OR2010-18419

Dear Ms. Stewart:

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# 402365 (Reference No. 2010-259).

The Kleberg County Sheriff's Office (the "sheriff") received a request for documents, reports, affidavits, and photographs pertaining to an attempted rape involving a named victim in a specified location on either February 7, 2006, or February 8, 2006. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note you have redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. See Gov't Code § 552.301(a), (e)(1)(D). Some of the redacted information consists of a license plate number, which you are authorized to redact if that license plate was issued by an agency of this state pursuant to Open Records Decision No. 684 (2009). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. Additionally, section 552.147(b) of the Government Code authorizes governmental bodies to withhold social security numbers of living individuals without seeking a decision from this

office. *See id.* § 552.147. You do not assert, nor does our review of the records indicate, you have been authorized to withhold any of the remaining redacted information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). As such, the information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the sheriff should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See Gov't Code* § 552.302.

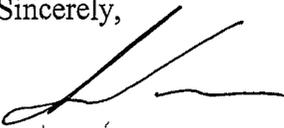
Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information 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. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. *Id.* at 683. In Open Records Decision No. 339 (1982), we concluded a sexual assault victim has a common-law privacy interest which prevents disclosure of information that would identify the victim. *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). Generally, only the 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; 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 Decisions Nos. 393 (1983), 339; *see also* Open Records Decision No. 440 (1986). In this instance, the requestor knows the identity of the alleged victim of attempted sexual assault. Therefore, withholding only the alleged victim's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy. Thus, the sheriff must withhold the submitted information in its entirety under section 552.101 in conjunction with common-law privacy. As our ruling is dispositive, we do not address your argument against disclosure.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 402365

Enc. Submitted documents

c: Requestor
(w/o enclosures)