



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2010

Ms. Miriam Rodrigues
Administrative Assistant
Harker Heights Police Department
402 Indian Trail
Harker Heights, Texas 76548

OR2010-18941

Dear Ms. Rodrigues:

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# 404186.

The City of Harker Heights (the "city") received a request for (1) information relating to a specified case number and (2) all reports involving the requestor or his property. You claim the submitted information is exempted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted. We assume the city has released any other information that is responsive to this request, to the extent any such information existed when the city received the request. If not, then any such information must be released immediately.¹ See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

Section 552.101 of the Government Code exempts 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 protects information that contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and is not of legitimate concern to the public. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. The types of information considered to be intimate and embarrassing in *Industrial Foundation* include information relating to sexual assault,

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

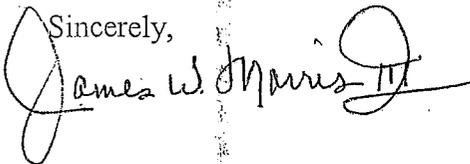
pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. Ordinarily, only highly intimate information that implicates an individual's privacy is withheld. However, in certain instances where the requestor knows the identity of the individual involved as well as the nature of the incident, the entire report must be withheld to protect the individual's privacy.

We find the submitted police report contains information that is highly intimate or embarrassing and not a matter of legitimate public interest. The report also indicates the requestor knows the identity of the individual who was involved in the incident to which the report pertains. Moreover, your correspondence with this office reveals the nature of the incident to which the report pertains, and you have provided the requestor with a copy of your correspondence.² Under these circumstances, withholding only the identity of the individual involved or certain details of the incident would not sufficiently protect the individual's common-law right to privacy. We therefore conclude the city must withhold the submitted report in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. As we are able to make this determination, we need not address the other exception you claim.

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

²Although a requestor is entitled to a copy of the comments a governmental body submits to this office under section 552.301(e) of the Government Code, any comments that disclose or contain the substance of the information at issue must be redacted from the requestor's copy. *See* Gov't Code § 552.301(e-1). Thus, in the future, you should redact such information from any copy of your comments that you send to a requestor.

Ref: ID# 404186

Enc: Submitted documents

c: Requestor
(w/o enclosures)