



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2010

Ms. S. McClellan
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2010-19408

Dear Ms. McClellan:

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# 405001 (DPD Request Number: 2010-9496).

The Dallas Police Department (the "department") received a request for a specified offense report. You claim the requested 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 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 560.003 of the Government Code provides "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 of the Government Code provides, however, that "[a] governmental body that possesses a biometric identifier of an individual . . . may . . . not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Accordingly, a person has a right of access to that person's biometric identifiers under section 560.002(1)(A). The submitted information contains two fingerprints, which we have marked. We are unable to determine whether the marked

fingerprints belong to the requestor. Accordingly, we must rule conditionally. If the marked fingerprints belong to the requestor, then he has a right of access to information under section 560.002(1)(A). Although you assert this information is confidential under common-law privacy, statutory access provisions generally prevail over the common law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 Tex. App.— Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when it directly conflicts with common-law principle); *see also Cash Am. Intern. Inc. v. Bennett*, 35 S.W.3d 12, 16 (Tex. 2000) (statute depriving person of common-law right will not be extended beyond its plain meaning or applied to cases not clearly within its purview). Thus, if the requestor has a right of access to the marked fingerprints pursuant to section 560.002(1)(A), then the department must release that information to him. If the marked fingerprints do not belong to the requestor, however, then the department must withhold this information under section 552.101 in conjunction with section 560.003.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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.

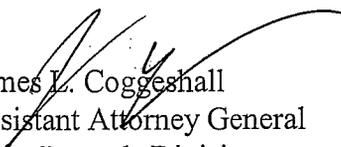
Generally, only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decisions Nos. 393 (1983), 339 (1982); *see also* Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). You state, and the submitted information reflects, the requestor knows the identity of the alleged victim in the submitted offense report. Thus, withholding only the identifying information from the requestor would not preserve the victim's common-law right to privacy. We therefore conclude the department must withhold the remaining information pursuant to the common-law privacy principles incorporated by section 552.101 of the Government Code.

To conclude, the department must release the marked fingerprints pursuant to section 560.002(1)(A) of the Government Code if they belong to the requestor. If the marked fingerprints do not belong to the requestor, then the department must withhold this information under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The department must withhold the remaining information under section 552.101 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, 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 L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/vb

Ref: ID# 405001

Enc. Submitted documents

c: Requestor
(w/o enclosures)