



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 18, 2011

Ms. Cecilia Gamez
Crime Records Bureau
City of McAllen
P.O. Box 220
McAllen, Texas 78501

OR2011-03773

Dear Ms. Gamez:

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# 411623.

The McAllen Police Department (the "department") received a request for information regarding a specified case. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions 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 the common-law right to privacy, which protects information if it (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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. Common-law privacy protects the types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). The submitted information relates to an alleged sexual assault. Generally, only information that either identifies or tends to identify a victim of sexual assault or another sex-related

offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold an entire report when this identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* ORD 393. In this instance, the requestor represents the listed victim, and therefore is the authorized representative of the individual whose privacy interests are at issue. Under section 552.023 of the Government Code, a person's authorized representative has a special right of access to information that would otherwise be excepted from public disclosure on the basis of the person's privacy. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning self or person for whom he is authorized representative). Accordingly, the department may not withhold any of the submitted information from this requestor under section 552.101 in conjunction with common-law privacy.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that "did not result in conviction or deferred adjudication." Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Although you claim section 552.108(a)(2), you inform us that the submitted information is related to a pending criminal prosecution. Because your assertion of section 552.108(a)(2) is inconsistent with your representation that the information at issue pertains to a pending case, we find that you have not demonstrated that the information pertains to a case that concluded in a final outcome other than a conviction or a deferred adjudication. Accordingly, the department may not withhold any of the information at issue under section 552.108(a)(2) of the Government Code. As you raise no further exceptions for the submitted information, it must be released to the requestor.¹

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

¹As noted, the requestor in this instance has a special right of access under section 552.023 to the information being released. Accordingly, if the department should receive another request for this information from someone without such a right of access, the department should again request an opinion from this office.

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,

Misty Haberer Barham

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/eeg

Ref: ID #

Enc. Submitted documents

c: Requestor
(w/o enclosures)