



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 11, 2011

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

OR2011-04990

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# 414537 (COSA File No. 2010-7539).

The San Antonio Police Department (the "department") received a request for a specified report. 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 exceptions 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 section encompasses common-law privacy and excepts from disclosure private facts about an individual. *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) the information is not of legitimate concern to the public. *Id.* at 685.

In Open Records Decision No. 393 (1983), this office concluded only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense generally 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). Further, in those instances where it is demonstrated the requestor knows the identity of the victim, the entire report must be withheld to protect the victim's privacy. In this instance, the requested information relates to a sexual assault, and the requestor knows the identity of the victim. Thus, withholding only the victim's identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, the entire record is subject to common-law privacy, and must be withheld under section 552.101 of the Government Code.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 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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 414537

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.