



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 10, 2011

Ms. Tiffany Bull
Assistant City Attorney
City of Arlington
P.O. Box 1065
Arlington, Texas 76004

OR2011-08258

Dear Ms. Bull:

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# 420245 (APD Reference No. 3687-040611).

The Arlington Police Department (the "department") received a request for report number 11-10723. You claim 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 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). In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which 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 Decision Nos. 393 at 2 (1983), 339 (1982), 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). The submitted information relates to an alleged

sexual assault. In this instance, the request indicates the requestor knows the identity of the alleged victim. Therefore, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. We therefore conclude the submitted report is confidential in its entirety pursuant to common-law privacy.¹

We note, however, that the requestor is with the Fort Worth Independent School District and states she is seeking disclosure of the report at issue pursuant to intergovernmental transfer. The interagency transfer doctrine provides that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinion No. GA-0055 (2003); Open Records Decision Nos. 680 at 7 (2003), 667 at 3-4 (2000). However, an interagency transfer of information is not permissible where the applicable statute enumerates the specific entities to which information encompassed by the statute may be disclosed, and the enumerated entities do not include the requesting governmental body. *See* Open Records Decision Nos. 655 at 8-9, 516 at 4-5 (1989), 490 at 2 (1988); *see also* Attorney General Opinion GA-0055.

Common-law privacy is not a confidentiality statute that enumerates specific entities to which release of the confidential information is authorized. Furthermore, we note that release pursuant to the interagency transfer doctrine does not constitute a release of information to the public for the purposes of section 552.007 of the Act. *See, e.g.*, Attorney General Opinions H-917 at 1 (1976), H-242 at 4 (1974); *see also* Gov't Code §§ 552.007, .352. Thus, the department does not waive its interests in withholding this information, including its law enforcement interests, by exercising its discretion under the interagency transfer doctrine. However, we note portions of the submitted information are subject to section 552.130 of the Government Code, which has its own access provision governing release of information.² *See* Gov't Code § 552.130(b). Consequently, because information subject to section 552.130 must be withheld if the department chooses to release the submitted information pursuant to the interagency transfer doctrine, we must consider the applicability of section 552.130 to the submitted information. Section 552.130 excepts from disclosure information relating to a motor vehicle operator's license or driver's license issued by a Texas agency. *Id.* § 552.130(a)(1). Upon review, we have marked the Texas driver's license numbers in the submitted information that are subject to section 552.130 of the Government Code.

Thus, with the exception of the information we marked that must be withheld under section 552.130 of the Government Code, the department has the discretion to release the

¹As we are able to make this determination, we need not address your remaining argument against disclosure.

²The 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).

submitted information to this requestor under the interagency transfer doctrine.³ However, should the department choose not to exercise its discretion under the interagency transfer doctrine, the department must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/eb

Ref: ID# 420245

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130, without the necessity of requesting an attorney general decision.