



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 19, 2011

Ms. Cecilia Gamez  
Crime Records Office  
McAllen Police Department  
P.O. Box 220  
McAllen, Texas 78505-0220

OR2011-10308

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# 424296.

The McAllen Police Department (the "department") received a request for information pertaining to case number 2011-026840. You claim the submitted information is excepted from disclosure under section 552.108 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." 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 668. 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, 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).

The request in this instance reveals the requestor knows the identity of one of the alleged victims. As such, withholding this alleged victim's identifying information from the requestor would not preserve this alleged victim's common-law right to privacy. However, the requestor may be an attorney for this alleged victim. As such, pursuant to section 552.023(b) the requestor would have a special right of access to information that would ordinarily be withheld to protect her client's privacy interests. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). However, upon review, we find the identifying information of the alleged victim whose identity is not known is inextricably intertwined with any information that would be released pursuant to section 552.023. Therefore, in this instance, withholding only identifying information of the unknown alleged victim from the requestor would not preserve that individual's common-law right to privacy. We therefore conclude the department must withhold the submitted report 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](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# 424296

Enc. Submitted documents

c: Requestor  
(w/o enclosures)