



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 4, 2011

Mr. James Mu
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Huntsville, Texas 77342-4004

Mr. John C. West
General Counsel
TDCJ - Office of the Inspector General
4616 West Howard Lane, Suite 250
Austin, Texas 78728

OR2011-11277

Dear Mr. Mu and Mr. West:

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# 425929.

The Texas Department of Criminal Justice (the "department") received a request for all information related to the requestor during a specified time period. The department's Office of General Counsel (the "OGC") and Office of the Inspector General (the "OIG") have submitted separate correspondence to this office, as well as separate responsive records each seeks to withhold from disclosure. The OGC and OIG state they will release some of the responsive information to the requestor. However, the OIG states it will withhold certain information pursuant to sections 552.117 and 552.147(b) of the Government Code, as well as the previous determination issued by this office in Open Records Letter No. 2005-01067 (2005).¹ The OGC claims its submitted information is excepted from disclosure under

¹Open Records Letter No. 2005-01067 (2005) serves as a previous determination that the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, are excepted from disclosure under section 552.117(a)(3) of the Government Code.

sections 552.101 and 552.107 of the Government Code. The OIG claims its submitted information is excepted under sections 552.101, 552.102, 552.108, and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note portions of submitted information, which we have marked, are not responsive to the instant request as they were created outside the date range requested. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (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 satisfied. *Id.* at 681-82. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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 information that either identifies or tends to identify a victim of sexual assault or other 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 identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* ORDs 393, 339; *see also* ORD 440 (detailed descriptions of serious sexual offenses must be withheld). In this instance, the responsive information indicates the requestor knows the identity of the victim of the alleged sex-related offense. Thus, withholding only the victim’s identifying information from the requestor would not preserve the victim’s common-law right to privacy. Accordingly, to protect the victim’s privacy, the department must withhold the information we have marked in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.² Furthermore, the remaining information is either not intimate or embarrassing, is of legitimate public interest, or it pertains to the requestor. *See* Gov’t Code § 552.023 (person or person’s authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests). Accordingly, the department may not withhold any of the remaining information under section 552.101 on the basis of

²As our ruling is dispositive, we need not address the remaining arguments against the disclosure of the information we marked under common-law privacy.

common-law privacy. As the department raises no further exceptions to disclosure, the remaining responsive information must be released.³

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 425929

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor has a special right of access to some of the information being released in this instance. See Gov't Code § 552.023. Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.