



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2011

Mr. John Ferguson
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2011-16909

Dear Mr. Ferguson:

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# 436375 (PIR# 11-2085).

The Texas Department of Public Safety (the "department") received a request for all information concerning a specified investigation. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information consists of two pages from a department file concerning the specified investigation. Thus, because the department failed to submit the entire file at issue, the department failed to submit information responsive to the instant request for information. To the extent the department maintains additional information responsive to this request that existed on the date the request was received, we assume you have released it. If you have not released any such information, you must do so at this time. Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 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). In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify the victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision No. 393 at 2 (1983); *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 legitimate interest in such information). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Thus, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note portions of the remaining information may be subject to section 552.1175 of the Government Code.¹ Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

(2) county jailers as defined by Section 1701.001, Occupations Code[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Act of May 29, 2011, 82nd Leg., R.S., S.B. 1046, § 2 (to be codified as Gov't Code § 552.1175(a)), Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 3 (to be codified as an amendment to Gov't Code § 552.1175(b)). Upon review, we find the department must withhold the information we have marked under section 552.1175 if the individuals to whom this information concerns are individuals described by section 552.1175(a)(1) or (a)(2), and they elect to restrict access to their information in accordance with section 552.1175(b). If

¹The 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).

these individuals are not individuals described by section 552.1175(a)(1) or (a)(2), or no elections are made, the department may not withhold the individuals' information under section 552.1175.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we marked under section 552.1175 of the Government Code if the individuals to whom this information concerns are individuals described by section 552.1175(a) of the Government Code, and they elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code. If these individuals are not individuals described by section 552.1175(a) of the Government Code, or no elections are made, the department may not withhold the individuals' information under section 552.1175 of the Government Code. The remaining information must be released.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/agn

Ref: ID# 436375

Enc. Submitted documents

c: Requestor
(w/o enclosures)