



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2011

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2011-18000

Dear Ms. Byles:

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# 438158 (PIR No. W011745).

The City of Fort Worth (the "city") received a request for any and all records, including the arrest warrant and arrest warrant affidavit, pertaining to the arrest of a named individual. You state the city is releasing some of the requested information. You state you have redacted certain Texas motor vehicle record information under section 552.130 of the Government Code pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007).¹ You further state you have

¹Open Records Letter Nos. 2006-14726 and 2007-00198 are previous determinations to the city authorizing it to withhold certain Texas motor vehicle record information under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code supercede Open Records Letter Nos. 2006-14726 and 2007-00198 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Letter Nos. 2006-14726 and 2007-00198.

redacted social security numbers pursuant to the section 552.147 of the Government Code.² 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. We have also received and considered comments submitted by the requestor's law firm. *See* Gov't Code 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, you inform us some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-13846 (2011). In that ruling, we found that with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. We note that the current requestor knows the identity of the victim, thus the facts and circumstances have changed. Therefore, as the relevant facts and circumstances have changed, the city may not rely on Open Records Letter Ruling No. 2011-13846 as a previous determination. *See* Open Records Decision No. 673 (2001) (describing the four criteria for a "previous determination"). Thus, we will address your arguments against disclosure of the submitted information.

Next, we must address the requestor's assertion that the arrest warrant and the arrest warrant affidavit are expressly public pursuant to article 15.26 of the Code of Criminal Procedure. Article 15.26 of the Code of Criminal Procedure provides:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours.

Crim. Proc. Code art. 15.26. Thus, we interpret article 15.26 of the Code of Criminal Procedure to apply only to court clerks. Accordingly, we find that article 15.26 does not make arrest warrants and arrest warrant affidavits maintained by the city expressly public.

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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685

²Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

(Tex. 1976). 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 another sex-related offense must be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when this identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decisions Nos. 393 (1983), 339 (1982); *see also* Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). The submitted information pertains to a sexual assault investigation. As the requestor is a legal assistant for the attorney of the suspect, we find the requestor knows the identity of the alleged victim. In this instance withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.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,



Sean Nottingham
Assistant Attorney General
Open Records Division

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³As our ruling is dispositive, we need not consider your remaining argument against disclosure.

Ref: ID# 438158

Enc. Submitted documents

c: Requestor
(w/o enclosures)