



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 23, 2012

Ms. Doris Preusse
Senior Records Clerk
Pflugerville Police Department
P.O. Box 679
Pflugerville, Texas 78691

OR2012-07847

Dear Ms. Preusse:

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# 454468.

The Pflugerville Police Department (the "department") received a request for offense reports pertaining to a specified address and two named individuals from January 2011 through March 10, 2012. You claim a portion of 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 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ 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). The type of information considered highly 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,

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Further, this office has concluded 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); *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). 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, 339; *see also* ORD 440 (detailed descriptions of serious sexual offenses must be withheld).

In this case, one of the submitted reports, #11090327, relates to an alleged sexual assault, and the requestor knows the identity of the alleged victim. Thus, withholding only the identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, the department must withhold the information you have marked as Exhibit "C" in its entirety, as well as the information we have marked in Exhibit "B," under section 552.101 of the Government Code in conjunction with common-law privacy.²

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(2). We have marked information in one of the call sheet reports in Exhibit "B" that is subject to section 552.130(a)(2) of the Government Code. However, we note section 552.130 is based on privacy principles and the requestor may have a right of access to the information at issue. *See id.* § 552.023 (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). In this instance, it is not clear whether the requestor has a right of access to the information at issue and we must rule conditionally. Thus, if the requestor has a right of access to the information we have marked under section 552.130, the department may not withhold this information from the requestor. Conversely, if the requestor does not have a right of access to this information, the department must withhold this information under section 552.130 of the Government Code.

In summary, the department must withhold the information you have marked as Exhibit "C" in its entirety, as well as the information we have marked in Exhibit "B," under section 552.101 of the Government Code in conjunction with common-law privacy. The

²As our ruling is dispositive, we do not address your argument under section 552.108 of the Government Code.

department must withhold the information we have marked in Exhibit "B" under section 552.130 of the Government Code unless the requestor has a right of access to the information under section 552.023 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,



Benjamin A. Bellomy
Assistant Attorney General
Open Records Division

BAB/dls

Ref: ID# 454468

Enc. Submitted documents

c: Requestor
(w/o enclosures)