



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 11, 2012

Ms. Miriam G. Rodrigues  
Administrative Assistant  
Harker Heights Police Department  
402 Indian Trail  
Harker Heights, Texas 76548

OR2012-08926

Dear Ms. Rodrigues:

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# 460187.

The City of Harker Heights (the "city") received a request for information pertaining to a specified sexual assault case involving two named individuals and information pertaining to the arrest of one of the named individuals for public intoxication. You indicate information pertaining to the public intoxication arrest has been released. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

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

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<sup>1</sup>You also claim the complainant's identifying information should be withheld from basic information in the event the submitted information is not excepted in its entirety. Section 552.108(c) of the Government Code provides section 552.108 of the Government Code does not except basic information about an arrested person, an arrest, or a crime from public disclosure. In order to claim basic information subject to section 552.108(c) is excepted from disclosure, you must first establish the information is subject to section 552.108 of the Government Code. As you do not raise section 552.108, we do not address this argument. See Gov't Code §§ 552.301, 302.

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* ORD 393, 339; *see also* ORD 440 (detailed descriptions of serious sexual offenses must be withheld). In this instance, the request for information shows the requestor knows the identity of the alleged sexual assault victim listed in the information at issue. 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 submitted information must be withheld in its entirety under 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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/ag

Ref: ID# 460187

Enc. Submitted documents

c: Requestor  
(w/o enclosures)