



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2012

Mr. Peter Gruning
Counsel for the City of Lockhart
Duvall, Gruning, & Dietz PLLC
112 North LBJ Drive
San Marcos, Texas 78666

OR2012-12714

Dear Mr. Gruning:

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# 461658.

The City of Lockhart (the "city"), which you represent, received a request for information related to a specified incident involving two named individuals. You state e-mail addresses will be redacted from the requested information pursuant to the previous determination issued under section 552.137 of the Government Code in Open Records Decision No. 684 (2009).¹ You claim the rest of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.² We have considered the exceptions you claim and reviewed the information you submitted.

We note the submitted information includes court documents that fall within the scope of section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't

¹Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold several categories of information without the necessity of requesting an attorney general decision, including an e-mail address of a member of the public under section 552.137 of the Government Code.

²Although you do not specifically raise section 552.101, we understand you to claim this exception for some of the submitted information.

Code § 552.022(a)(17). Thus, the court documents we have marked are subject to disclosure under section 552.022(a)(17). Although you seek to withhold the court documents under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 does not make information confidential for purposes of section 552.022(a)(17). Therefore, the city may not withhold any of the information in the court documents under section 552.108. Likewise, although section 552.101 of the Government Code is a confidentiality provision for purposes of section 552.022(a)(17), section 552.101 is not applicable to any of the information in the court documents.³ Therefore, the court documents must be released pursuant to section 552.022(a)(17) of the Government Code.

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. This exception encompasses common-law privacy and excepts from disclosure private facts about an individual. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Information is excepted from required public disclosure by a common-law right of privacy if the information (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. *Id.* at 685.

In Open Records Decision No. 393 (1983), this office concluded that generally only that information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; *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 a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

The remaining information at issue is related to an investigation of a sex-related offense, and the requestor knows the alleged victim's name. We believe that, in this instance, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. We therefore conclude the city must withhold the remaining information from this requestor in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

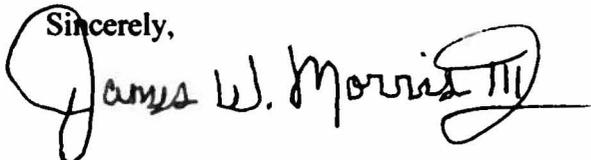
³We note common-law privacy under section 552.101 of the Government Code is not applicable to information contained in public court documents. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992).

In summary, the city (1) must release the marked court documents pursuant to section 552.022(a)(17) of the Government Code and (2) must withhold the rest of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. As we are able to make these determinations, we need not address your arguments against disclosure.

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 461658

Enc: Submitted documents

c: Requestor
(w/o enclosures)