



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 10, 2012

Mr. Stephen A. Cumbie  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, Third Floor  
Fort Worth, Texas 76102

OR2012-16168

Dear Mr. Cumbie:

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# 467604 (ORR# W018645).

The City of Fort Worth (the "city") received a request for incident report number 05071782. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you state the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2011-14355 (2011). Thus, you seek to withhold the submitted information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). In the previous ruling, we determined because the requestor knew the identity of the victim of sexual assault, the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. In this instance, you inform us the requestor is an attorney, and it is possible the present requestor is the attorney for the previous requestor. However, the present requestor is not the previous requestor, and it is not clear the present requestor represents the previous requestor. Thus, we find the law, facts, or

circumstances on which the previous ruling was based have changed. Accordingly, the city may not rely on Open Records Letter No. 2011-14355 as a previous determination, and we will address your arguments against disclosure of 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. This section encompasses common-law privacy and excepts from disclosure private facts about an individual. *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) the information is not of legitimate concern to the public. *Id.* at 685.

The submitted information relates to a sexual assault. In Open Records Decision No. 393 (1983), this office concluded generally, only the 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). Further, in those instances where it is demonstrated the requestor knows the identity of the victim, the entire report must be withheld to protect the victim's privacy. You argue the entire report should be withheld on the basis of common-law privacy to protect the victim's identity. However, we find you have not sufficiently demonstrated, and we are unable to determine, whether the requestor knows the victim's identity. Because it is unclear whether the requestor knows the victim's identity, we must rule in the alternative. Therefore, if the city determines the requestor knows the victim's identity, then the submitted information must be withheld from the requestor in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor does not know the victim's identity, then the entire report may not be withheld under section 552.101 in conjunction with common-law privacy.

However, if the requestor does not know the victim's identity, then the city must withhold the identifying information of a victim of sexual assault under section 552.101 of the Government Code in conjunction with common-law privacy. *Ellen*, 840 S.W.2d 519; ORD 440. Upon review, we find most of the information you have marked, and the additional information we have marked, consists of the identifying information of the victim of sexual assault. However, a portion of the information you marked, which we marked for release, does not consist of identifying information. Thus, if the requestor does not know the victim's identity, then with the exception of the information we marked for release, the city

must withhold the information you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the city determines the requestor knows the victim's identity, then the submitted information must be withheld from the requestor in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor does not know the victim's identity, then with the exception of the information we marked for release, the city must withhold the information you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy, and must release the remaining information.<sup>1</sup>

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 467604

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>1</sup>We note the information being released contains social security numbers. Section 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. See Gov't Code § 552.147(b).