



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 24, 2013

Mr. Matthew Cross
Assistant City Attorney
Office of the City Attorney
City of El Paso
2 Civic Center, 9th Floor
El Paso, Texas 79901

OR2013-01392

Dear Mr. Cross:

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# 477805.

The El Paso Police Department (the "department") received a request for information pertaining to a specified incident. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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), *cert. denied*, 430 U.S. 931 (1977). 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. *Indus. Found.*, 540 S.W.2d 668.

In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which 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. Open Records Decision No 393 at 2 (1983); *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 requestor in this case knows the identity of the victim. 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 conclude, therefore, that the department must generally withhold the submitted information in its entirety pursuant to section 552.101.

We note, however, that the requestor states he is with the Texas Tech Police Department and that he is seeking disclosure of the information at issue for use in a criminal investigation or prosecution. This office has concluded that information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of the information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decisions Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. However, the transfer of confidential information from one governmental body to another is prohibited where a relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute's enumerated entities. *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body); *see also* Open Records Decision Nos. 655, 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure).

Common-law privacy is not a confidentiality statute that enumerates specific entities to which release of the confidential information is authorized. Furthermore, we note that release pursuant to the interagency transfer doctrine does not constitute a release of information to the public for the purposes of section 552.007 of the Act. *See, e.g.,* Attorney General Opinions H-917 at 1 (1976), H-242 at 4 (1974); *see also* Gov't Code §§ 552.007, .352. Thus, the department does not waive its interests in withholding this information by exercising its discretion under the interagency transfer doctrine. However, portions of the submitted information are subject to section 552.130 of the Government Code, which has its own access provision governing release of information. *See* Gov't Code § 552.130(b). Consequently, because information subject to section 552.130 must be withheld if the department chooses to release the submitted information pursuant to the

interagency transfer doctrine, we must consider the applicability of section 552.130 to the submitted information. Section 552.130 excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state or another state or country. *Id.* § 552.130(a)(2). Upon review, the motor vehicle information you have marked, and the additional motor vehicle information we have marked must be withheld under section 552.130 of the Government Code even if the department chooses to release the information at issue pursuant to the interagency transfer doctrine.

Thus, with the exception of the marked information, the department has the discretion to release the submitted information to this requestor under the interagency transfer doctrine. However, should the department choose not to exercise its discretion under the interagency transfer doctrine, the department must withhold the submitted information in its entirety pursuant to 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, 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 477805

Enc. Submitted documents

c: Requestor
(w/o enclosures)