ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2013

Ms. Cary Grace
Assistant City Attorney
Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2013-01610

Dear Ms. Grace:

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# 481556.

The Austin Police Department (the "department") received a request for information related to a specified offense involving two named individuals. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted. We also have considered the comments we received from the requestor.[1]

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

[1]*See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

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 submitted information is related to an investigation of an alleged sexual assault, 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 department must withhold the submitted information from this requestor 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, 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

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

JWM/bhf

Ref: ID# 481556

Enc: Submitted documents

c: Requestor
(w/o enclosures)