



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 3, 2013

Mr. Jose R. Guerrero  
Ramirez & Guerrero, L.L.P.  
700 North Veterans Boulevard  
Business Center, Suite B  
San Juan, Texas 78589

OR2013-07327

Dear Mr. Guerrero:

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# 486438 (No. 13-012G).

The Region One Education Service Center (the "center"), which you represent, received a request for information related to the requestor's client, including information related to a specified investigation. You state you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code.<sup>1</sup> We have considered the exceptions 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 if it (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 test must be satisfied. *Id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information

---

<sup>1</sup>We note you also claim the attorney-client privilege, as encompassed by section 552.107(1) of the Government Code, under section 552.101 of the Government Code in conjunction with rule 1.05 of the Texas Disciplinary Rules of Professional Conduct and Texas Rule of Evidence 503. As section 552.101 does not encompass discovery privileges, we do not address your assertion of that exception. See Open Records Decision No. 676 at 1-3 (2002).

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. *See id.* at 683. In Open Records Decision No. 393 (1983), this office also 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. 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). In this instance, the submitted information pertains to an alleged sexual assault. Additionally, the requestor's client knows the identity of the alleged sexual assault victim. Therefore, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. We conclude, therefore, the center must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>2</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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

---

<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Ref: ID# 486438

Enc. Submitted documents

c: Requestor  
(w/o enclosures)