



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 20, 2014

Ms. Shirley Spitzer  
Records Supervisor  
Beaumont Police Department  
P.O. Box 3827  
Beaumont, Texas 77704-3827

OR2014-14697

Dear Ms. Spitzer:

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# 533342.

The Beaumont Police Department (the "department") received a request for information pertaining to a specified case and any related reports. You state the department will release some of the requested information. You claim the department is not required to comply with the request pursuant to section 552.028 of the Government Code. In the alternative, you claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.028 of the Government Code provides:

(a) A governmental body is not required to accept or comply with a request for information from:

(1) an individual who is imprisoned or confined in a correctional facility; or

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under [the Act].

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

(c) In this section, "correctional facility" means:

(1) a secure correctional facility, as defined by Section 1.07, Penal Code;

(2) a secure correctional facility and a secure detention facility, as defined by Section 51.02, Family Code; and

(3) a place designated by the law of this state, another state, or the federal government for the confinement of a person arrested for, charged with, or convicted of a criminal offense.

Gov't Code § 552.028. You state the requestor is the mother of an incarcerated individual. However, the requestor does not indicate she is acting as her son's agent, and you have not established the requestor is, in fact, acting as the incarcerated individual's agent. Therefore, we conclude section 552.028 of the Government Code does not permit the department to decline to comply with this request.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

In Open Records Decision No. 393 (1983), this office concluded, generally, only 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 requestor in this case knows the identity of the alleged victim. We believe, in this instance, withholding only identifying information of the victim from the requestor would not preserve the victim's common law right to privacy. We

conclude, therefore, the department must withhold the submitted information in its entirety pursuant to section 552.101 in conjunction with common-law privacy.<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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/bhf

Ref: ID# 533342

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.