



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 9, 2017

Ms. Dalia Flores
Paralegal
City of San Angelo
72 West College Avenue
San Angelo, Texas 76903

OR2017-17958

Dear Ms. Flores:

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# 676723 (City File No. 17-698).

The San Angelo Police Department (the "department") received a request for a specified incident report. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception 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. Common-law privacy 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. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. In this instance, the submitted information pertains to an alleged sexual assault. Generally, only information that either identifies or tends to identify a victim

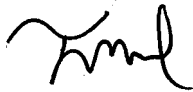
¹We note, as you acknowledge, the department did not comply with section 552.301 of the Government Code in requesting this decision. See Gov't Code § 552.301(b), (e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. See *id.* §§ 552.007, .302, .352.

of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body must generally withhold all of the information pertaining to a sexual assault when the requestor knows the identity of the alleged sexual assault victim. *See* ORD 393. In this instance, the requestor may represent the victim whose privacy interest is at issue. Under section 552.023 of the Government Code, “a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person for whom she is authorized representative). Accordingly, we must rule conditionally. If the requestor is not this individual’s authorized representative, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is the victim’s authorized representative, the submitted information may not be withheld from the requestor on the basis of section 552.101 in conjunction with common-law privacy. As you raise no further exceptions to disclosure, if the requestor is the victim’s authorized representative, the department must release the submitted information to this requestor.²

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, 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

²In that case, should the department receive another request for this particular information from a different requestor, then the department should again seek a decision from this office. *See* Gov’t Code § 552.301(a), .302.

Ref: ID# 676723

Enc. Submitted documents

c: Requestor
(w/o enclosures)