



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 11, 2019

Ms. Judy Hickman
Assistant Supervisor
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704

OR2019-06706

Dear Ms. Hickman:

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# 754847.

The Beaumont Police Department (the "department") received two requests from different requestors for information related to a specified incident. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

Section 552.101 of the Government Code excepts "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 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 demonstrated. *See id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find the submitted information contains information that is considered highly

intimate or embarrassing and is not of legitimate concern to the public. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entire report must be withheld to protect the individual's privacy.

In this instance, the department has not demonstrated, and we are not able to determine, the first requestor knows the identity of the victim. Accordingly, the department may not withhold the entirety of the submitted information under section 552.101 of the Government Code from the first requestor on that basis. Further, we find the submitted information does not contain identifying information of the victim of sexual assault. Thus, the department may not withhold any portion of the submitted information from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

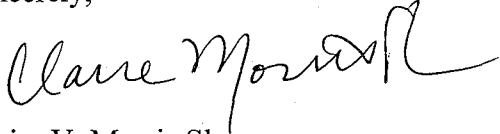
The second requestor is aware of the identity of the victim listed in the information. Therefore, withholding only the individual's identity or certain details of the incident from the second requestor would not preserve the individual's common-law right of privacy. However, the second requestor has informed this office his law firm represents the listed victim. Thus, the second requestor may be the authorized representative of that individual, and may have a right of access to information pertaining to the individual that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, if the second requestor is acting as the authorized representative of the listed victim, then the department may not withhold any portion of the submitted information from the second requestor under section 552.101 on the basis of common-law privacy. However, if the second requestor is not acting as the authorized representative of the individual, then the department must withhold the submitted information from the second requestor in its entirety under section 552.101 in conjunction with common-law privacy.

In summary, the department must release the submitted information in its entirety to the first requestor. If the second requestor is acting as the authorized representative of the individual, then the department must also release the submitted information in its entirety to the first requestor. However, if the second requestor is not acting as the authorized representative of the individual, then the department must withhold the submitted information from the second requestor in its entirety under section 552.101 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.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,

A handwritten signature in cursive script that reads "Claire Morris Sloan". The signature is written in black ink and is positioned above the typed name.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/gw

Ref: ID# 754847

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)