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**OFFICE OF THE CITY ATTORNEY**

September 2, 2010

Mr. Kenneth Pybus  
2002 Marathon  
Abilene, TX 79601

Re: Request for Public Information - Case No. 10-0016427

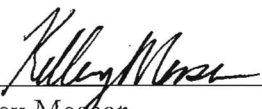
Dear Mr. Pybus:

The City Attorney's Office has reviewed your request dated August 30, 2010, to the Abilene Police Department.

Pursuant to Government Code Section 552.301(e)(1)(a), enclosed please find a redacted copy of the written comments that our office is submitting to the Office of the Attorney General.

The determination was made to seek an Attorney General's Opinion regarding whether or not the information requested is public information subject to disclosure. The Attorney General should notify you directly of their decision. Should they determine the information must be released; the City will then contact you regarding the costs for copying said information.

Sincerely,

  
\_\_\_\_\_  
Kelley Messer  
Assistant City Attorney

# REQUEST FOR INFORMATION

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## I. The Request

On August 25, 2010, the Abilene Police Department (APD) received a request from Kenneth Pybus, seeking a copy of Case No. 10-16427. The request is enclosed as Exhibit A.

Included as Exhibit B are all of the potential documents responsive to the request. Because both the Attorney General's Office and Texas case law have determined that not all records are public information subject to disclosure. We respectfully request an Attorney General's Opinion on this particular information.

## II. Background Facts

**THIS INFORMATION IS BEING REDACTED PURSUANT TO GOVERNMENT CODE SECTION 552.301(e)(1)(a).**

## III. Reasons for Non-Disclosure

### Section 552.101 and Right to Privacy

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." TEX. GOV'T CODE § 552.101. This section encompasses the common-law right of privacy, which protects information that is 1) highly intimate or embarrassing, such that its release 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 (Tex. 1976). See *Letter Op. OR2005-03587*. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information 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. *Id. at 683*. This necessarily includes the identity of a victim of sexual assault. *Id.*

## IV. Conclusion

Section 552.101 of the government Code excepts the requested information from required public disclosure because it is information considered to be confidential by either constitutional, statutory, or by judicial decision.

For the stated reasons, the City requests the Office of the Attorney General issue an opinion that, pursuant to Texas Government Code Section 552.101 the requested information is exempt from disclosure.

Respectfully Submitted,

T. DANIEL SANTEE, II  
City Attorney  
State Bar No. 00792816

By:

A handwritten signature in cursive script, appearing to read "Kelley Messer", written over a horizontal line.

Kelley Messer  
Assistant City Attorney  
State Bar No. 24007672