



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 14, 2009

Mr. David K. Walker
Montgomery County Attorney
207 West Phillips, 1st Floor
Conroe, Texas 77301

OR2009-00533

Dear Mr. Walker:

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# 332773.

The Montgomery County Sheriff's Department (the "department") received a request for all reports from 2007 concerning two specified individuals. You state that the department will release the majority of the requested information. You claim that 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. This section encompasses the doctrine of common-law privacy, which protects information that (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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include information relating to sexual assault,

¹We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act, unless the requestor has a right of access to the social security number pursuant to section 552.023 of the Government Code. *See* Gov't Code §§ 552.147(b); .023.

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. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual at issue and the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, although you seek to withhold the submitted information in its entirety, you have not demonstrated, nor does it otherwise appear, this is a situation where the information must be withheld in its entirety on the basis of common-law privacy. Nevertheless, we agree that the portions of the submitted information that we have marked pursuant to section 552.101 are highly intimate and not of legitimate public interest.

However, we note that the submitted information indicates that the individual to whom the marked information pertains is the requestor's spouse. If the requestor is the spouse's authorized representative, then he has a right of access to her private information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a).² If the requestor has a right of access under section 552.023, then the marked information may not be withheld from him on privacy grounds and must be released. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Conversely, if the requestor does not have a right of access under section 552.023, then the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Finally, we note that the submitted information contains Texas driver's license information belonging to a person other than the requestor.³ Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130(a)(1), (2). The department therefore must withhold the information we have marked pursuant to section 552.130 unless the requestor demonstrates that he has a right of access to this information under section 552.023.

²Section 552.023(a) provides that "[a] person or 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).

³The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, unless the requestor establishes that he has a right of access pursuant to section 552.023 of the Government Code, the department must withhold the information we have marked pursuant to sections 552.101 and 552.130 of the Government Code. The rest of the submitted information must be released.

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, 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 at (512) 475-2497.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/jb

Ref: ID# 332773

Enc. Submitted documents

cc: Requestor
(w/o enclosures)