



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 27, 2009

Mr. David A. Mendoza
Assistant District Attorney
Hays County District Attorney's Office
110 East MLK Boulevard
San Marcos, Texas 78666

OR2009-02604

Dear Mr. Mendoza:

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# 335957.

The Hays County Sheriff's Office (the "sheriff") received a request for information pertaining to a case number C07-14676. You state you will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We also understand you to raise section 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

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.

²Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), .301(e)(1)(D). You do not assert, nor does our review of our records indicate, that you have been authorized to withhold any of the bracketed information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000).

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 also 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* 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; *see also* *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.). To demonstrate the applicability of common-law privacy, both prongs of the test articulated in *Industrial Foundation* must be satisfied. 540 S.W.2d at 681-82.

We note, and you acknowledge, that because privacy is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates only to a deceased individual. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). In this instance, you argue that the information you have marked may implicate the privacy interests of the individual's family. Upon review of your arguments and the submitted information, we find you have failed to establish it contains any information pertaining to the individuals at issue that is highly intimate or embarrassing and not of legitimate public interest. Therefore, we conclude that the marked information may not be withheld under section 552.101 in conjunction with the right to common-law privacy.

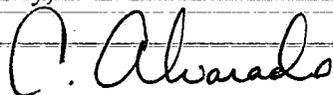
Section 552.130 of the Government Code excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state. Gov't Code § 552.130(a)(1). Accordingly, the sheriff must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. As you raise no further arguments against disclosure, the remaining 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,

A handwritten signature in black ink that reads "C. Alvarado". The signature is written in a cursive style with a large initial "C".

Christina Alvarado
Assistant Attorney General
Open Records Division

CA/cc

Ref: ID# 335957

Enc. Submitted documents

cc: Requestor
(w/o enclosures)