



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 14, 2010

Ms. M. Ann Montgomery  
Assistant Ellis County & District Attorney  
Temporary Administration Building  
1201 North Highway 77, Suite 104  
Waxahachie, Texas 75165-7832

OR2010-00766

Dear Ms. Montgomery:

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# 367222.

The Ellis County Sheriff's Office (the "sheriff") received a request for offense report 09-11234 and the dispatch call sheets for 09-16184 and 09-15890. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions 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 common-law right of privacy, which 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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, report 09-11234 reflects that the requestor knows the identity of the individual involved as well as the nature of the incident. Thus, withholding only the identity of the individual involved or certain details of the incident from the requestor would not preserve the individual's common-law

right to privacy. Therefore, to protect the privacy of the individual to whom the information pertains, the sheriff must withhold report 09-11234 and the related calls for service report in its entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. Additionally, we find that a portion of call sheet 09-15890 is highly intimate or embarrassing and not of legitimate concern to the public. Accordingly, the sheriff must also withhold the information you have marked in call sheet 09-15890 under section 552.101 in conjunction with common-law privacy.

We note that call sheet 09-15890 contains a Texas driver's license number, which we have marked, that is subject to section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit or Texas motor vehicle title or registration. Gov't Code § 552.130(a)(1), (2). Therefore, the sheriff must withhold the Texas driver's license we have marked under section 552.130 of the Government Code.<sup>1</sup>

However, the requestor is the spouse of the person whose privacy rights are implicated and may be acting as a representative of that individual. Section 552.023(a) of the Government Code states 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 is protected from public disclosure by laws intended to protect that person's privacy interests. Therefore, if the requestor is not the authorized representative of the individual at issue, the sheriff must withhold report 09-11234 and the related call for service report in its entirety and the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. On the other hand, if the requestor is the authorized representative of the individual at issue, the sheriff may not withhold any of the requested information under section 552.101 of the Government Code in conjunction with common-law privacy or section 552.130 of the Government Code, and we will address your argument under section 552.108 for this information. *See id.* § 552.023.

Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." *Id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *Ex parte*

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<sup>1</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

*Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a concluded investigation conducted by the sheriff that did not result in a conviction or deferred adjudication. Based on your representation and our review, we conclude that section 552.108(a)(2) is applicable to the information you have marked.

In summary, if the requestor is not the authorized representative of the individual at issue, then the sheriff must: (1) withhold report 09-11234 and the related call for service in its entirety and the information you have marked under section 552.101 in conjunction with common-law privacy, and (2) the information we have marked under section 552.130 of the Government Code. If the requestor is the authorized representative of the individual at issue, then the sheriff may withhold the information you have marked under section 552.108(a)(2) of the Government Code. 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](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, toll free at (888) 672-6787.

Sincerely,



Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/eeg

Ref: ID# 367222

Enc. Submitted documents

c: Requestor  
(w/o enclosures)