



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 11, 2010

Mr. David K. Walker  
County Attorney  
Montgomery County  
Open Records Division  
207 West Phillips, Suite 100  
Conroe, Texas 77301

OR2010-02141

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# 369994 (Montgomery County #2009-4289).

The Montgomery County Sheriff's Department (the "sheriff") received a request for police records involving a named individual, including those related to a specified January 2009 incident. You claim the responsive information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim.

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 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and

local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request seeks all the sheriff's records involving the named individual, including information regarding a specified January 2009 incident. The part of the request requiring the sheriff to compile unspecified law enforcement records pertaining to the named individual implicates that individual's right to privacy. Thus, to the extent the sheriff maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the part of the request that seeks information pertaining to the specified incident does not implicate the named individual's privacy interests. Accordingly, report number 09A001812 may not be withheld as part of a criminal history compilation.

You claim report number 09A001812 is excepted under common-law privacy. The type of information considered intimate or 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. 540 S.W.2d at 683. This office has found some kinds of medical information or information indicating disabilities or specific illnesses to be excepted from required public disclosure under common-law privacy. See Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Generally, only highly intimate information that implicates the privacy of an individual is withheld. In this instance, although the requestor reveals that he knows the identity of the individual involved, he states he does not know the nature of the incident at issue. Thus, this is not a situation in which the entire report must be withheld on the basis of common-law privacy. Upon review, however, we find the personal medical information we marked in the report, as well as the other information we have marked, is intimate or embarrassing and of no legitimate public interest. The sheriff must withhold this marked information under section 552.101 in conjunction with common-law privacy.

The remaining information in report number 09A001812 contains Texas motor vehicle record information subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 excepts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). The sheriff must withhold the Texas motor vehicle record information

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

we have marked in the remaining information under section 552.130 of the Government Code.<sup>2</sup>

In summary, to the extent the sheriff maintains law enforcement records, other than report number 09A001812, depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must also withhold the information we have marked in report number 09A001812 under section 552.101 in conjunction with common-law privacy, as well as the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.<sup>3</sup>

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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

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<sup>2</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 a Texas driver's license number and Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>3</sup>We note the information being released includes social security numbers. 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.

Ref: ID# 369994

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)