



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 15, 2010

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

OR2010-03626

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# 373596.

The Montgomery County Sheriff's Department (the "sheriff") received a request for any records pertaining to a specified family. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. You have also marked information under sections 552.130 and 552.147 of the Government Code. We have considered the raised exceptions 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." 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 requires the sheriff to compile unspecified law enforcement records concerning the individuals at issue. We find that this request for unspecified law enforcement records implicates the named individuals' right to privacy. Therefore, to the extent the sheriff maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the sheriff must withhold such information under section 552.101 in conjunction with common-law privacy.

We note the sheriff has submitted records to this office that do not depict any of the specified individuals as a suspect, arrestee, or criminal defendant. Because this information is not part of a compilation of an individual's criminal history, we will address your arguments against release of this information.

Common-law privacy also encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*, including 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. *See* 540 S.W.2d at 683. Upon review, we agree the information you have marked in Exhibit C is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the sheriff may withhold the information you have marked in Exhibit C under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code exempts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). Thus, the sheriff must withhold the information you have marked under section 552.130 of the Government Code.<sup>1</sup>

You have marked social security numbers under section 552.147 of the Government Code. Section 552.147 provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a). Accordingly, the sheriff may withhold the social security numbers you marked under section 552.147 of the Government Code.<sup>2</sup>

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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.

<sup>2</sup>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. *See* Gov't Code § 552.147(b).

In summary, to the extent the sheriff maintains law enforcement records depicting any of the specified individuals as a suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 in conjunction with common-law privacy. The sheriff must also withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information you have marked under section 552.130 of the Government Code. The sheriff may withhold the information you have marked under section 552.147 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,



Lauren J. Holmsley  
Assistant Attorney General  
Open Records Division

LJH/jb

Ref: ID# 373596

Enc. Submitted documents

c: Requestor  
(w/o enclosures)