



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 28, 2010

Mr. David Daugherty
Assistant County Attorney
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002

OR2010-07791

Dear Mr. Daugherty:

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# 381162 (C.A. No. 10GEN0562).

The Harris County Constable Precinct 6 (the "constable") received a request for information pertaining to specified investigations of robbery and possession of drug paraphernalia. You state information pertaining to the robbery investigation does not exist in the constable's records.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.147 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 public 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 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 type of information considered intimate and

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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. In addition, this office has found that an individual's criminal history when compiled by a governmental body may be protected under common-law privacy. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Accordingly, the constable must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.²

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document. *Id.* § 552.130(a)(1), (3). Accordingly, the constable must withhold the Texas identification card number you have marked under section 552.130 of the Government Code.

Section 552.147 of the Government Code states "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. Accordingly, the constable may withhold the social security number you have marked under section 552.147 of the Government Code.³

In summary, the constable must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The constable must also withhold the information you marked under section 552.130 of the Government Code. The constable may withhold the social security number you 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, 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

²As our ruling is dispositive, we need not address your argument against the disclosure of this information.

³Section 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).

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,

A handwritten signature in black ink, appearing to read 'M Entsminger', written in a cursive style.

Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/rl

Ref: ID# 381162

Enc. Submitted documents

cc: Requestor
(w/o enclosures)