



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 25, 2010

Mr. Joe Shannon, Jr.
Criminal District Attorney
Tarrant County
401 West Belknap
Fort Worth, Texas 76196-0201

OR2010-09415

Dear Mr. Shannon:

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# 384366.

The Tarrant County Sheriff's Office (the "sheriff") received a request for any 9-1-1 or police call reports for a specified address in a specified time frame. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the request only seeks 9-1-1 or police call reports for a specified address. Accordingly, the submitted incident reports are not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request and the sheriff is not required to release that information in response to the request.

You claim that some of the responsive information is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 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 a conviction or

deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). In this instance, you generally state that “the requested information pertains to a case that the [sheriff] investigated but either closed or suspended without further action[.]” However, the responsive information consists of call event reports pertaining to seven separate incidents and you have not identified which reports relate to the concluded case. Further, you have failed to explain how these separate incidents directly pertain to a criminal case that concluded in a result other than conviction or deferred adjudication. *See* Gov’t Code § 552.301(e)(1)(D) (governmental body must submit copy of specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents). Therefore, we find section 552.108(a)(2) is not applicable to any of the responsive information, and thus, the sheriff may not withhold any of the responsive information on that basis.

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 laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Upon review, we find you have failed to demonstrate any of the responsive information constitutes CHRI generated either by the TCIC or NCIC database. Therefore, no portion of the submitted information is confidential under chapter 411, and none of it may be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also 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. *See 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. *See id.* at 681-82. The type 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. This office has found that medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate and embarrassing and not of legitimate public interest. Accordingly, the

sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, we understand you to assert portions of the remaining responsive information are excepted from public disclosure under constitutional privacy, which is also encompassed by section 552.101 of the Government Code. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find the sheriff has not demonstrated how any of the remaining responsive information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the sheriff may not withhold any of the information at issue under section 552.101 on the basis of constitutional privacy.

Next, you raise section 552.117 of the Government Code for a portion of the remaining responsive information. Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). However, section 552.117(a)(1) only protects a current or former employee's information in the context of his or her role as an employee of the governmental body and not as a suspect, defendant, complainant, victim, or witness in a criminal investigation. *See generally id.* §§ 552.024 (allowing employees and officials of governmental body to elect to withhold enumerated categories of information held by governmental body in its capacity as employer), .117(a)(1) (exception is subject to proper election under 552.024). Because the sheriff holds the State of Texas employee's information in the context of her role as an involved person in the submitted call event reports, section 552.117 is inapplicable in this instance.

We note that the remaining responsive information contains Texas motor vehicle information.¹ Section 552.130 of the Government Code excepts from disclosure information

¹The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

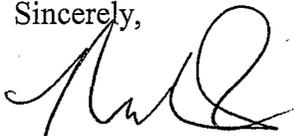
relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. We have marked the Texas motor vehicle information that the sheriff must withhold under section 552.130 of the Government Code.²

In summary, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the information we have marked under section 552.130 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 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/jb

Ref: ID# 384366

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²We 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.