



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2010

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

OR2010-13126

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# 392008.

The Montgomery County Sheriff's Department (the "sheriff") received a request for information pertaining to incidents that occurred at a specified apartment complex involving two named individuals or a specified address. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 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 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 established. *See id.* at 681-82. 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. *Id.* at 683. 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police

stations and compiled summary of criminal history information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request, in part, requires the sheriff to compile unspecified police records concerning the two named individuals and, thus, implicates those individuals' right to privacy. Therefore, to the extent the sheriff maintains law enforcement records depicting either 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.¹

We note you have submitted case number 10A007456, which does not depict either named individual as a suspect, arrestee, or criminal defendant. This information does not constitute a compilation of the named individuals' criminal histories, and it may not be withheld on this basis. However, you claim case number 10A007456 contains information subject to common-law privacy. This office has also found that some kinds of medical information or information indicating disabilities or specific illnesses is excepted from disclosure under common-law privacy. *See* Open Records Decision Nos. 343 (1982) (references in emergency medical records to drug overdoses, acute alcohol intoxication, obstetrical or gynecological illnesses, convulsions or seizures, and emotional or mental distress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 470 (1987) (illness from severe emotional and job-related stress). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public concern; therefore, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information you have marked in case number 10A007456 is not highly intimate or embarrassing, and it may not be withheld on the basis of common-law privacy.

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."² Gov't Code § 552.130(a)(1). Accordingly, the sheriff must withhold the driver's license information we have marked under section 552.130.³

¹As our ruling is dispositive of this information, we need not address your remaining arguments against its disclosure.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

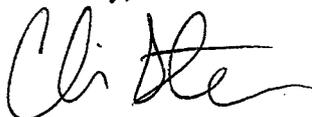
³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, (1) to the extent the sheriff maintains law enforcement records depicting either 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; (2) the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the sheriff must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.⁴

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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 392008

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the remaining information contains a social security number. 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.