ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 24, 2010

Mr. David A. Mendoza
Assistant District Attorney
Hays County District Attorney's Office
110 East Martin Luther King
San Marcos, Texas 78666

OR2010-14560

Dear Mr. Mendoza:

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# 394493.

The Hays County Sheriff's Office (the "sheriff") received a request for records of (1) 911 calls from the requestor to the sheriff during a specified time interval and (2) calls involving a specified address to which the sheriff responded during the same time interval. You state that basic information has been released. *See* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-88 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976). You claim that the rest of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You contend that release of the submitted information could "unduly interfere with the detection, investigation, and prosecution of crime by releasing evidence that is material to

the case[,]" "interfere with other investigations resulting from the incident[,]" "subject potential witnesses to intimidation or harassment[,]" and "hinder cooperation between witnesses and the [d]istrict [a]ttorney." You also state that "[t]he investigation is still pending." We note that the responsive information is related to numerous incidents that occurred over a period of almost two years. We also note that some of the incidents to which the information pertains were not of a criminal nature. Although you generally contend that section 552.108(a)(1) is applicable to the responsive information, you have neither demonstrated that the information at issue pertains to any particular pending case nor otherwise established that release of the information would be detrimental to any specific criminal matter. Thus, having considered your arguments, we find that you have not demonstrated that release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d at 186-88 (court delineates law enforcement interests that are present in active cases). We therefore conclude that the sheriff may not withhold any of the submitted information under section 552.108 of the Government Code.

We note that the sheriff must withhold some of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.[1] Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

We have marked information in the submitted documents that is highly intimate or embarrassing and not a matter of legitimate public interest. The sheriff must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. The submitted recordings of 911 calls also contain information that the sheriff must withhold under section 552.101 in conjunction with common-law privacy. We have attached a list of the information in the recordings that must be withheld and the

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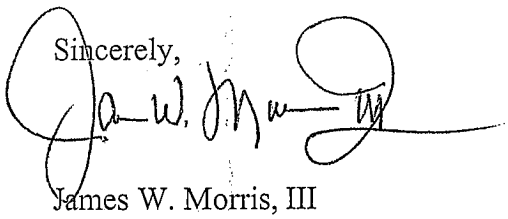
[1]This office will raise section 552.101 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

locations of that information in the recordings. The rest of the submitted information must be released.[2]

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 394493

Enc: Submitted information

c: Requestor
(w/o enclosures)

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[2]We note that the sheriff would ordinarily be required to withhold some of the remaining information to protect the requestor's privacy. The requestor has a right, however, to her own private information. *See* Gov't Code § 552.023(a) ("A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Should the sheriff receive another request for these same records from a person who would not have a right of access to this requestor's private information, the sheriff should resubmit these records and request another decision. *See* Gov't Code §§ 552.301(a), .302.