



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 15, 2010

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

OR2010-18847

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# 403482 (2010-4022).

The Montgomery County Sheriff's Office (the "sheriff") received a request for all records relating to a named individual, including a specified evading arrest charge, a specified theft charge, two specified probation violations, information regarding court-ordered rehabilitation, and verification of the duration of the individual's probation.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted information regarding the individual's evading arrest charge, specified probation violations, court-ordered rehabilitation, or probation duration. Accordingly, to the extent information responsive to this portion of the request existed on the date the sheriff received the request, we assume you have released it. If the sheriff has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

¹You provide documentation indicating the requestor clarified her request for information. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for 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. This section encompasses the common-law right to 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 demonstrated. *Id.* at 861-82. This office has found 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 individual has significant privacy interest in compilation of one’s criminal history). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. In part, the present request requires the sheriff to compile unspecified law enforcement records concerning the named individual. We find the request for unspecified law enforcement records implicates the named individual’s right to privacy. Therefore, to the extent the sheriff maintains law enforcement records, other than those relating to the incidents specified by the requestor, depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, incident report number 08A003036 relates to one of the incidents specified by the requestor. Therefore, this information does not constitute a criminal history compilation, and it may not be withheld on that basis.

We note incident report number 08A003036 contains information subject to section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator’s license or driver’s license issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1). Accordingly, the sheriff must withhold the Texas motor vehicle record information we have marked under section 552.130.²

In summary, to the extent the sheriff maintains law enforcement records, other than those relating to the incidents specified by the requestor, depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the Texas motor vehicle record information we have marked in

²We note this office 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.

incident report number 08A003036 under section 552.130 of the Government Code. The sheriff must release the remainder of incident report number 08A003036.³

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/vb

Ref: ID# 403482

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information subject to release contains social security numbers. 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. Gov't Code § 552.147(b).