



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2011

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, 1st Floor
Conroe, Texas 77301

OR2011-00274

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# 405735.

The Montgomery County Sheriff's Department (the "department") received a request for all incident reports, police reports, officer reports, and 9-1-1 emergency records involving a named individual for a specified period of time. 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.

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. 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. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. *See Indus. Found.* 540 S.W.2d at 683. In addition, this office has found that some

kinds of medical information or information indicating disabilities or specific illnesses to be 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). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

In this instance, although you seek to withhold the submitted information in its entirety, you have not demonstrated, nor does it otherwise appear, this is a situation where the entire report must be withheld on the basis of common-law privacy. Accordingly, the submitted information may not be withheld in its entirety under common-law privacy. However, upon review, we have marked portions of the submitted information that are highly intimate or embarrassing and of no legitimate public interest. We note the submitted audio recordings also contains information that is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department must withhold the information we have marked in the submitted reports, as well as the corresponding information within the submitted audio recordings, under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, if the department lacks the technical capacity to redact the private information from the audio recordings, the department must withhold the audio recordings in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Open Records Decision No. 364 (1983).

We note the remaining information contains driver's license numbers and the year of expiration of a driver's license. Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130(a)(1)-(2). Accordingly, the department must withhold the Texas driver's license numbers and the year of expiration of a driver's license we have marked under section 552.130 of the Government Code.¹

In summary, the department must withhold the information we have marked in the submitted reports, as well as the corresponding information within the submitted audio recordings, under section 552.101 of the Government Code in conjunction with common-law privacy. If the department lacks the technical capacity to redact the private information from the audio recordings, the department must withhold the audio recordings in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy. The

¹We 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 Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

department must withhold the Texas driver's license numbers we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eeg

Ref: ID# 405735

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the remaining information being released includes social security numbers of living individuals. 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).