



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 1, 2011

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

OR2011-02935

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# 410317 (ORR# 2010-5242).

The Montgomery County Sheriff's Office (the "sheriff") received a request for information pertaining to case number 10A014583. 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 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. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. 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, you state, and the report at issue reveals, that the requestor knows the identity of the individual involved as well as the nature of the information in the submitted report. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy.

However, the requestor is the spouse of the individual whose privacy is at issue. Thus, the requestor may be this individual's authorized representative. If the requestor is acting as her spouse's authorized representative, then she has a special right of access to information that would ordinarily be withheld to protect her husband's privacy interests. *See Gov't Code § 552.023(a)* (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). Thus, if the requestor is not acting as her spouse's authorized representative, then, to protect the privacy of the individual to whom the information relates, the sheriff must withhold the submitted report in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is acting as her spouse's authorized representative, the sheriff may not withhold the submitted information under section 552.101 in conjunction with common-law privacy. *See Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individual requests information concerning himself). In such case, we note portions of the submitted information are subject to section 552.130 of the Government Code.¹

Section 552.130 excepts from public disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" *Gov't Code § 552.130(a)(1)*. Because section 552.130 protects privacy interests, the requestor has a right of access to Texas motor vehicle record information pertaining to herself and any individual for whom she is an authorized representative. *See id.* § 552.023. Upon review, we have marked the Texas driver's license numbers and expiration dates pertaining to individuals other than the requestor and her husband. Such information must be withheld under section 552.130 of the Government Code.²

In summary, if the requestor is not acting as her spouse's authorized representative, the sheriff must withhold the submitted report in its entirety under section 552.101 of the

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

²We note *Open Records Decision No. 684 (2009)* is 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 opinion.

Government Code in conjunction with common-law privacy. If the requestor is acting as her spouse's authorized representative, the sheriff must withhold the information we marked under section 552.130 of the Government Code but must release the remaining submitted information to her.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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 410317

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the remaining information 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. *See* Gov't Code § 552.147. However, the requestor has a right of access to social security numbers pertaining to herself and any individual for whom she is an authorized representative. *See generally id.* § 552.023(b). Additionally, because the requestor has a special right of access to any information being released, the sheriff must again seek a decision from this office if it receives another request for the same information from a different requestor.