



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 1, 2011

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

OR2011-04572

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# 413485 (Montgomery ORR # 2011-0241).

The Montgomery County Sheriff's Department (the "sheriff") received a request for the report related to a specified incident. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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 if it (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. *See 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 met. *Id.* at 681-82. 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 id.* at 683. Additionally, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are generally highly

intimate or embarrassing. *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, that this is a situation in which the entire report must be withheld on the basis of common-law privacy. Therefore, the submitted information may not be withheld in its entirety under section 552.101 in conjunction with common-law privacy. However, upon review, we find some of the submitted information, which we have marked, is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the sheriff must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

We note the remaining information contains a Texas driver's license number subject to section 552.130 of the Government Code.¹ This section 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 sheriff must withhold the information we have marked under section 552.130 of the Government Code.²

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

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.

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

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/eeg

Ref: ID # 413485

Enc. Submitted documents

c: Requestor
(w/o enclosures)