



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2011

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

OR2011-12045

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# 427584 (Montgomery ORR# 2011-2806).

The Montgomery County Sheriff's Department (the "sheriff") received a request for any and all incident reports and statements attached to a specified case. You state you will redact social security numbers pursuant to section 552.147 of the Government Code and driver's license numbers pursuant to the previous determination issued in Open Records Decision No. 684 (2009).¹ You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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 common-law right of 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. *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 established. *Id.* at 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information

¹Section 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. See Gov't Code § 552.147(b). Open Records Decision No. 684 serves as 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.

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.

The submitted report relates to an alleged sexual assault. Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* ORD 393, 339; *see also* *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.— El Paso 1992, writ denied) (identity of witnesses to and victim of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information); ORD 440 (detailed descriptions of serious sexual offenses must be withheld).

In this instance, the submitted information indicates that the requestor knows the identity of the alleged sexual assault victim. Thus, withholding only the victim's identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, to protect the victim's privacy, the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.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,



Kirsten Brew
Assistant Attorney General
Open Records Division

KB/em

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 427584

Enc. Submitted documents

c: Requestor
(w/o enclosures)