



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 28, 2011

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

OR2011-14069

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# 434411 (ORR# 2011-4396).

The Montgomery County Sheriff's Office (the "sheriff") received a request for information regarding two specified incidents. You claim that the requested information is excepted from disclosure pursuant to 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, which 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). 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 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 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 seek to withhold the submitted information in its entirety under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. However, upon review, we find a portion of the information, which we have marked, is highly intimate and embarrassing and is not of legitimate public concern. Thus, the sheriff must generally withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the remaining information may not be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or a motor vehicle title or registration issued by an agency of this state, another state, or country is excepted from public release.¹ Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130(a)(1)-(2)). We note section 552.130 protects personal privacy. Accordingly, the sheriff must generally withhold the information we have marked under section 552.130.

We note the requestor is the spouse of the individual whose private information is at issue. Thus, the requestor may be this individual's authorized representative. If the requestor is the authorized representative of this individual, then she has a special right of access to information that would ordinarily be withheld to protect 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 the individual's authorized representative, then the sheriff may not withhold the information we have marked under section 552.101 in conjunction with common-law privacy or section 552.130, and the submitted information must be released in its entirety. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Conversely, if the requestor is not the individual's authorized representative, then the sheriff must withhold the information we have marked pursuant to section 552.101 in conjunction with common-law privacy and section 552.130. The remaining information must be released.

¹The Office of the Attorney General will raise a mandatory exception such as section 552.130 on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/agn

Ref: ID# 434411

Enc. Submitted documents

c: Requestor
(w/o enclosures)