



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2011

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

OR2011-16535

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# 436836 (ORR # 2011-4778).

The Montgomery County Sheriff's Department (the "sheriff") received a request for any family violence, assault, or attempted suicide reports concerning a named individual during a specified time period. 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. This section encompasses the common-law right to 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 met. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police

stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

After reviewing the request and the submitted information, we find the requestor is seeking, in part, specific information involving herself and the named individual. This aspect of the request does not implicate the named individual's right to privacy. Accordingly, the information we have indicated, which involves the requestor and the named individual, may not be withheld as a compilation of the named individual's criminal history. However, we find the requestor also seeks unspecified law enforcement records concerning the named individual. Thus, to the extent the sheriff maintains any other law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

Common-law privacy also protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. See *id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). 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, the requestor knows the identity of the individual involved in the information we have indicated, as well as the nature of the incident to which the information pertains. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the individual's common-law right of privacy. Accordingly, the sheriff must withhold the indicated information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the sheriff must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the sheriff maintains any other law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, any such information must also be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

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,

A handwritten signature in cursive script that reads "Misty Haberer Barham".

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 436836

Enc. Submitted documents

c: Requestor
(w/o enclosures)