



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 9, 2011

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

OR2011-16554

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# 435782 (ORR# 2011-4568).

The Montgomery County Sheriff's Department (the "department") received a request for information related to two specified incidents. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

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 exception encompasses common-law privacy, which protects information that (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). The types of information considered to be 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. *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, the requestor knows both the nature of one of the incidents to which the submitted information pertains and the identity of the individual involved in that incident.

Thus, withholding only the individual's identity or certain details of that incident from this requestor would not preserve the individual's common-law right to privacy. We therefore conclude the information related to incident number 11-0124750 is generally confidential under section 552.101 in conjunction with common-law privacy. Although you also seek to withhold the information related to incident number 11-0041513 on privacy grounds, we find none of the information concerning that incident is highly intimate or embarrassing and a matter of no legitimate public interest. We therefore conclude the department may not withhold any of the information related to incident number 11-0041513 under section 552.101 in conjunction with common-law privacy.

We note the requestor appears to be the spouse of the individual whose privacy interests are implicated by the information related to incident number 11-0124750. Thus, the requestor may be the individual's authorized representative. As such, the requestor would have a right of access under section 552.023 of the Government Code to information the department would be required to withhold from the public to protect the individual's privacy. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).<sup>1</sup> Therefore, if the requestor is the individual's authorized representative, then the information related to incident number 11-0124750 must be released pursuant to section 552.023.<sup>2</sup> If the requestor is not the individual's authorized representative, then the information related to incident number 11-0124750 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

We also note the information related to incident number 11-0041513 includes a license plate number. Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle title or registration issued by an agency of this state or another state or country.<sup>3</sup> *See* Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). This exception protects personal privacy. Therefore, if the requestor is the authorized representative of the owner of the vehicle to which the license plate number pertains or owns an interest in the vehicle, then she also has a right of access to the license plate number at issue under section 552.023. In that event, the license plate number must be released. If the requestor is not the owner's authorized representative

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<sup>1</sup>Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

<sup>2</sup>We note specific portions of the information related to incident number 11-0124750 would be protected from public disclosure by common-law privacy under section 552.101. The requestor also has a right of access to that information, however, if she is the authorized representative of the individual involved.

<sup>3</sup>This office will raise section 552.130 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

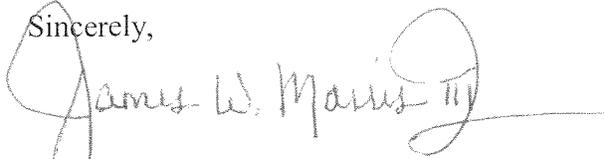
and does not own an interest in the vehicle, then the department must withhold the license plate number we have indicated under section 552.130 of the Government Code.<sup>4</sup>

In summary, the department must withhold (1) all of the information related to incident number 11-0124750 under section 552.101 of the Government Code in conjunction with common-law privacy, unless the requestor has a right of access under section 552.023 of the Government Code; and (2) the license plate number we have indicated in the information related to incident number 11-0041513 under section 552.130 of the Government Code, unless the requestor has a right of access under section 552.023. In any event, the department must release the rest of the submitted information.

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](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 "James W. Morris III". The signature is written in black ink and includes a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 435782

Enc: Submitted information

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note Open Records Decision No. 684 (2009) is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including a Texas license plate number under section 552.130 of the Government Code.