



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 22, 2011

Ms. Janet I. Monteros  
Assistant County Attorney  
El Paso County Courthouse  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2011-17295

Dear Ms. Monteros:

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# 437503.

The El Paso County Sheriff's Office (the "sheriff") received a request for information relating to a specified vehicle accident. You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 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. This section encompasses information protected by other statutes, such as section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records are subject to required public disclosure in accordance with [the Act], except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with [the Act], but is subject to disclosure:

(1) under a subpoena or authority of other law; or

(2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25, § 11. You state the submitted information contains autopsy photographs. Upon review, we agree the submitted photographs labeled OME\_5478 through OME\_5518 consist of photographs of a body taken during an autopsy. You state neither of the statutory exceptions to confidentiality is applicable in this instance. Accordingly, we find the sheriff must withhold the photographs at issue under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types 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. *See id.* at 683. This office has also found 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). We note the submitted photographs labeled IMG\_0237 through IMG\_0244 contain depictions of hospital patients. Upon review, we find these photographs are highly intimate or embarrassing and of no legitimate public interest. Accordingly, the sheriff must withhold these photographs under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>1</sup>

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license or motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as amendments to Gov't Code § 552.130(a)(1), (2)). Accordingly, the sheriff must withhold the information you have marked in the submitted documents, as well as the portions of the remaining photographs that reveal a license plate number or depict a driver's license, under section 552.130 of the

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

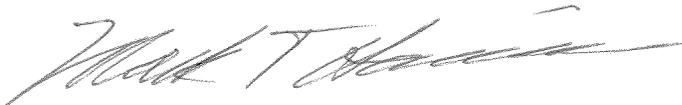
Government Code.<sup>2</sup> However, the sheriff may not withhold the remaining portions of the photographs under section 552.130.

In summary, the sheriff must withhold the submitted photographs labeled OME\_5478 through OME\_5518 under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. The sheriff must withhold the submitted photographs labeled IMG\_0237 through IMG\_0244 under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the information you have marked in the submitted documents, as well as the portions of the remaining photographs that reveal a license plate number or depict a driver's license, under section 552.130 of the Government Code. The sheriff must release the remaining 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,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

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<sup>2</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. See Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code superceded Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Decision No. 684.

Ref: ID# 437503

Enc. Submitted documents

c: Requestor  
(w/o enclosures)