



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2012

Ms. M. Ann Montgomery-Moran
Assistant Ellis County and District Attorney
Ellis County Courts Building
109 South Jackson
Waxahachie, Texas 75165

OR2012-01241

Dear Ms. Montgomery-Moran:

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# 444072.

The Ellis County Sheriff's Office (the "sheriff") received a request for information related to a specified offense involving a named individual. You claim some of the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions 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 is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Information that identifies or tends to identify a sexual assault victim is confidential under common-law privacy. *See id.* at 683; *see also* Open Records Decision Nos. 393 (1983), 339 (1982). Therefore, as the submitted information is related to alleged sexual assault, the sheriff must withhold the information we have marked that identifies the alleged victim under section 552.101 of the Government Code in conjunction with common-law privacy. Although the sheriff seeks to withhold other information related to the victim on this basis, we conclude the remaining information at issue does not identify the victim and may not be withheld on privacy grounds under section 552.101.

Section 552.101 of the Government Code also encompasses information other statutes make confidential. Information acquired from a polygraph examination is confidential under section 1703.306 of the Occupations Code, which provides in part:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

Occ. Code § 1703.306(a). We have marked information that was acquired from a polygraph examination and is confidential under section 1703.306(a). The requestor does not appear to be eligible to obtain any of the marked information pursuant to the statutory access provisions. We therefore conclude the sheriff must withhold the marked information under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Section 552.108 of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the release of some of the remaining information, which you have marked, would interfere with a pending criminal prosecution. Based on your representation, we conclude the sheriff may withhold the marked information under 552.108(a)(1) of the Government Code. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country. *See* Gov’t Code § 552.130(a)(1). You have marked the remaining information the sheriff seeks to withhold under section 552.130. We conclude some of that information, which we have marked, does not fall within the scope of this exception and must be released. We agree the sheriff must withhold the remaining driver’s license information you have marked under section 552.130 of the Government Code.

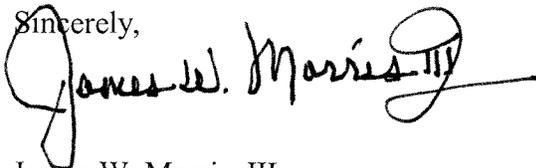
Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). We agree the sheriff may withhold the social security number you have marked under section 552.147 of the Government Code.

In summary, the sheriff (1) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) must withhold the information we have marked under section 552.101 in conjunction with section 1703.306 of the Occupations Code; (3) may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code; (4) must withhold the remaining information you have marked under section 552.130 of the Government Code, except for the information we have marked for release; and (5) may withhold the information you have marked under section 552.147 of the Government Code. The rest of the submitted information must be released.

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 black ink that reads "James W. Morris, III". The signature is written in a cursive style with a long horizontal line extending to the right.

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

JWM/em

Ref: ID# 444072

Enc: Submitted documents

c: Requestor
(w/o enclosures)