



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 26, 2012

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

OR2012-01321

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# 444274.

The Ellis County Sheriff's Office (the "sheriff") received a request for information pertaining to a specified incident. You claim that the submitted 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 submitted information.

Section 552.108(a)(1) 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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you have marked relates to a pending investigation and prosecution and its release would hinder that prosecution. Based on this representation and our review, we conclude the release of the information you have marked would interfere with the detection, investigation, or prosecution of crime. *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). Thus, the sheriff may withhold the information you have marked under section 552.108(a)(1) of the Government Code.<sup>1</sup>

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which 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, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. The types of information considered intimate or 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. In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Although portions of the remaining information use a pseudonym for the alleged sexual assault victim, we note a portion of the remaining information contains the actual name of the alleged sexual assault victim. Although the sheriff generally must withhold the alleged sexual assault victim’s identifying information, we note the requestor is the individual whose private information is at issue. Under section 552.023 of the Government Code, a person has a special right of access to her own private information that would otherwise be excepted from public disclosure. *See* Gov’t Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person for whom she is authorized representative). Accordingly, the sheriff may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy from this requestor.

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. Gov’t Code § 552.130(a)(1). The sheriff must withhold the driver’s license number you have marked under section 552.130 of the Government Code.

You also raise section 552.147 of the Government Code, which excepts from required disclosure the social security numbers of living persons. *Id.* § 552.147. However, upon review, we find the remaining information does not contain any social security numbers

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<sup>1</sup>As our ruling is dispositive for this information, we do not address your remaining arguments against its disclosure.

subject to section 552.147. Accordingly, none of the remaining information may be withheld on that basis.

In summary, the sheriff may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The sheriff must withhold the driver's license number you have marked under section 552.130 of the Government Code. The remaining information must be released.<sup>2</sup>

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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/ag

Ref: ID# 444274

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>The information being released contains confidential information to which the requestor has a right of access. Thus, if the sheriff receives another request for this particular information from a different requestor, then the sheriff should again seek a decision from this office.