



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 16, 2012

Mr. David K. Walker  
County Attorney  
County of Montgomery  
207 West Phillips Suite 100  
Conroe, Texas 77301

OR2012-05403

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# 450989 (OR# 2012-0658).

The Montgomery County Sheriff’s Department (the “department”) received a request for records related to (1) a specified case number; (2) 9-1-1 calls or calls for service regarding a named individual during a specified time period; and (3) 9-1-1 calls or calls for service involving two named individuals, a specified address, and a specific date. You claim some of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the information you submitted. We assume the department has released any other information responsive to this request that existed on the date of the department’s receipt of the request. If not, then any such information must be released immediately.<sup>2</sup> *See* Gov’t Code §§ 552.221, .301(a), .302; Open Records Decision No. 664 (2000).

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<sup>1</sup>Although you do not specifically raise section 552.130 of the Government Code, you have marked information the department seeks to withhold under this exception. Accordingly, we will address section 552.130, which 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).

<sup>2</sup>We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism’d); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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. You claim section 552.101 in conjunction with 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). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d 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). This office has determined other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

You have marked the information you contend is private. We find some of the marked information is not highly intimate or embarrassing and a matter of no legitimate public interest. Therefore, that information, which we have marked, may not be withheld on privacy grounds under section 552.101 and must be released. We conclude the remaining information you have marked, as well as the additional information we have marked, is generally confidential under section 552.101 of the Government Code in conjunction with common-law privacy.

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). We agree the driver’s license information you have marked falls within the scope of section 552.130 of the Government Code.

We note that, like common-law privacy under section 552.101 of the Government Code, section 552.130 of the Government Code protects personal privacy. In this instance, the requestor may be an authorized representative of the individual to whom the information protected by common-law privacy and one of the driver’s license numbers pertain. If so, the requestor would have a right of access to the individual’s private information under section 552.023 of the Government Code. *See id.* § 552.023.<sup>3</sup> Therefore, if the requestor is the authorized representative of the individual concerned, then the information protected by common-law privacy and the individual’s driver’s license number may not be withheld from the requestor under sections 552.101 and 552.130 of the Government Code and must be released. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated if individual requests information concerning himself). If the requestor is not the

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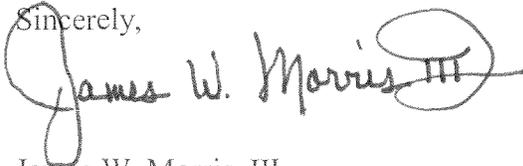
<sup>3</sup>Section 552.023 provides in part that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a).

individual's authorized representative, then the department must withhold the marked information protected by common-law privacy under section 552.101 of the Government Code and the individual's driver's license number under section 552.130 of the Government Code. In either event, the department must withhold the other marked driver's license information under section 552.130.<sup>4</sup> 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](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 large, stylized "J" and "M".

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

JWM/em

Ref: ID# 450989

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note the submitted information also includes social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. The requestor has a right of access, however, to an individual's social security number if the requestor is the individual's authorized representative. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).