



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 29, 2012

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

OR2012-13689

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# 463514 (ORR# 2012-4172).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for a specified police report. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 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. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. 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 documents reflect the requestor knows both the identity of the individual involved and the nature of the information in the submitted documents. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the common-law right to privacy of the individual at issue. Accordingly, to protect the privacy of the individual to whom the information relates, the sheriff's office must generally withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the documents reveal the requestor has power of attorney over the individual whose private information is at issue. Thus, the requestor may be this individual's authorized representative. If the requestor is acting as the individual's authorized representative, then he has a special right of access to information that would ordinarily be withheld to protect privacy interests. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). Thus, if the requestor is not acting as the individual's authorized representative, then the sheriff's office must withhold the submitted information in its entirety under section 552.101 in conjunction with common-law privacy. If the requestor is acting as the individual's authorized representative, then the sheriff's office may not withhold the submitted information under section 552.101 in conjunction with common-law privacy. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). In that instance, we will consider your additional argument against disclosure.

You also claim section 552.108 of the Government Code for 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 submitted information pertains to an active criminal investigation. Based on your representation and our review, we conclude the release of the submitted information 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 that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the submitted information.

However, as you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic

information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic information you have indicated in Exhibit D, which must be released, the sheriff's office may withhold the submitted information under section 552.108(a)(1) of the Government Code.

In summary, if the requestor is not acting as the individual's authorized representative, then the sheriff's office must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is acting as the individual's authorized representative, then with the exception of the basic information, the sheriff's office may withhold the submitted information under section 552.108(a)(1) of the Government Code.

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,



Kristi L. Wilkins  
Assistant Attorney General  
Open Records Division

KLW/ag

Ref: ID# 463514

Enc. Submitted documents

c: Requestor  
(w/o enclosures)