



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 24, 2012

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

OR2012-15179

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# 470788.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for a specified report. 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 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body that claims section 552.108 must reasonably explain how and why this exception 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 indicate the information you have marked to be withheld under section 552.108 is related to a concluded investigation that did not result in a conviction or a deferred adjudication. Based on your representation, we conclude the sheriff's office may withhold the marked information under section 552.108(a)(2).

Next, we address your claims under sections 552.101 and 552.130 of the Government Code. Section 552.101 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. *See id.* at 681-82. Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* 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). We agree the remaining information you have marked under section 552.101 is highly intimate or embarrassing and not a matter of legitimate public interest. We therefore conclude the sheriff's office must withhold that information 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 sheriff's office must withhold the driver's license number you have marked under section 552.130 of the Government Code.

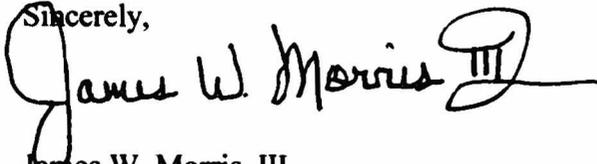
In summary, the sheriff's office (1) may withhold the information you have marked under section 552.108(a)(2) of the Government Code; (2) must withhold the remaining information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) must withhold the driver's license number you have marked under section 552.130 of the Government Code. The rest of the submitted information must be released. As we are able to make these determinations, we need not address the other exception you claim.

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 large initial "J" and a distinct "III" at the end.

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

JWM/bhf

Ref: ID# 470788

Enc: Submitted documents

c: Requestor
(w/o enclosures)