



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2012

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

OR2012-18641

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# 471319.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident and the disposition of the requestor's husband's property. 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 submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to a concluded case that did not result in a conviction or deferred adjudication. Based on your representations, we find the sheriff's office may withhold the information you have marked under section 552.108(a)(2).¹

¹As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section 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 type 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.

Upon review, we find the information you have marked and the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff’s office must generally withhold the marked information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the requestor is the spouse of the individual to whom the marked information pertains and may have a right of access to this information. *See* Gov’t Code § 552.023 (“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”). Thus, if the requestor is acting as the authorized representative of her spouse, then she has a right of access to the marked information pursuant to section 552.023, and this information may not be withheld from her under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of her spouse, then the sheriff’s office must withhold the marked information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(1), (2). We note section 552.130 protects privacy interests. Because the requestor is the spouse of one of the individuals whose motor vehicle record information is at issue, she may have a right of access to her spouse’s motor vehicle record information. *See id.* § 552.023. Thus, if the requestor is acting as the authorized representative of her spouse, then she has a right of access to her spouse’s motor vehicle record information pursuant to section 552.023, and this information may not be withheld from her under section 552.130. If the requestor is not acting as the authorized representative of her spouse, then the sheriff’s office must withhold her spouse’s motor vehicle record information under section 552.130. The remaining motor vehicle record information you have marked pertains to individuals other than the requestor’s spouse, and the sheriff’s office must withhold this information under section 552.130 of the Government Code.

In summary, the sheriff’s office may withhold the information you have marked under section 552.108(a)(2) of the Government Code. If the requestor is not acting as the

authorized representative of her spouse, the sheriff's office must withhold the marked information pertaining to the requestor's spouse under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. The sheriff's office must withhold the remaining motor vehicle record information you have marked under section 552.130 of the Government Code. The remaining information must be released.²

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 471319

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the sheriff's office must again seek a decision from this office if it receives a request for this information from a different requestor.