



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 11, 2013

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

OR2013-02340

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# 478807.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for any calls for police, response from police, or incident reports pertaining to a specified address during a specified time frame. You claim 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.

Initially, we note portions of the submitted information, which we have marked and indicated on the submitted disc, are not responsive to the instant request because they do not pertain to the specified address. This ruling does not address the public availability of non-responsive information, and the sheriff's office is not required to release non-responsive information in response to this request.¹

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 information protected by other statutes, such as section 611.002 of the Health and Safety Code. Section 611.002 provides "[c]ommunications between a patient and a professional, and records of the identity,

¹As our ruling is dispositive, we need not address your argument against disclosure of this information.

diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.” Health & Safety Code § 611.002(a). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate, or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Upon review, we find none of the information you have marked constitutes mental health records under section 611.002 of the Health and Safety Code. Accordingly, none of the information at issue may be withheld under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681–82. The type of information considered highly 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 we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff’s office must withhold this information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

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 that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state the information you have marked pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable. Accordingly, the sheriff’s office may withhold the information you have marked under section 552.108(a)(2) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license or driver’s license issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a)(1). Upon review, we find the sheriff’s office must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a).

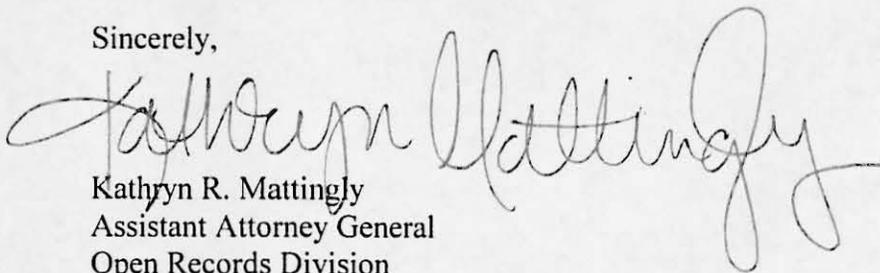
Upon review, we find the sheriff's office may withhold the social security numbers you have marked under section 552.147(a) of the Government Code.

In summary, the sheriff's office (1) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, (2) may withhold the information you have marked under section 552.108(a)(2) of the Government Code, (3) must withhold the information you have marked under section 552.130 of the Government Code, and (4) may withhold the information you have marked under section 552.147 of the Government Code. The remaining responsive 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, 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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 478807

Enc. Submitted documents

c: Requestor
(w/o enclosures)