



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 21, 2013

Mr. J.D. Lambright  
County Attorney  
Montgomery County Attorney's Office  
207 West Phillips, 1<sup>ST</sup> Floor  
Conroe, Texas 77301

OR2013-04682

Dear Mr. Lambright:

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# 482113 (ORR# 2013-0014).

The Montgomery County Sheriff's Department (the "sheriff's department") received a request for case numbers 12A019222 and 12A019164. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

You argue case number 12A019164 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. *See id.* at 681-82. 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, you seek to withhold the entirety of case number 12A019164 under section 552.101 in conjunction with common-law

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<sup>1</sup>We understand you to raise section 552.101 of the Government Code based on the substance of your argument.

privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Accordingly, the sheriff's department may not withhold the entirety of case number 12A019164 under section 552.101 of the Government Code on that basis.

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(a)(1) 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, and have provided an affidavit from the Montgomery County District Attorney's Office demonstrating, the submitted reports pertain to an active criminal investigation and prosecution. Based on your representation, we conclude the release of the information at issue 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 case numbers 12A019222 and 12A019164.

However, we note 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 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the location of the offense. *See* ORD 127 at 3-4. However, the basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. *See id.* Thus, with the exception of the basic information, the sheriff's department may withhold case numbers 12A019222 and 12A019164 under section 552.108(a)(1) of the Government Code.

You argue portions of the basic information within case number 12A019164 are confidential under section 552.101 of the Government Code in conjunction with common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.* 540 S.W.2d at 685. 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. This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure), 422 (1984), 343 (1982). Upon review, we find the information we have marked within case number 12A019164 is highly intimate or embarrassing and not of legitimate public concern.

Therefore, the sheriff's department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how any portion of the remaining basic information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining basic information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of the basic information, the sheriff's department may withhold case numbers 12A019222 and 12A019164 under section 552.108(a)(1) of the Government Code.<sup>2</sup> In releasing the basic information, the sheriff's department must withhold the information we marked within case number 12A019164 under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>3</sup>

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

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<sup>2</sup>We note the basic information includes the arrestee's social security number. You state the sheriff's department will withhold the arrestee's social security number under section 552.147(b) of the Government Code, which 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. Gov't Code § 552.147.

<sup>3</sup>We note some the basic information pertaining to case number 12A019222 being released in this instance may be confidential with respect to the general public. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the sheriff's department receives another request for this information from a different requestor, the sheriff's department must again seek a ruling from this office.

Mr. J.D. Lambright - Page 4

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)