



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 14, 2013

Mr. JD Lambright  
Montgomery County Attorney  
207 West Phillips, Suite 100  
Conroe, Texas 77301

OR2013-07991

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# 487336 (ORR# 2013-1291).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for information regarding a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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, 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. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouses files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We agree the present request requires the sheriff's office

to compile unspecified criminal history records concerning the individual named in the request, and thus, implicates the named individual's right to privacy. Therefore, to the extent the sheriff's office maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information under section 552.101 in conjunction with common-law privacy.

We note you have submitted records that do not list the named individual as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interest of the named individual and may not be withheld as a compilation of the individual's criminal history under section 552.101 of the Government Code in conjunction with common-law privacy. However, we will consider whether any of this information is excepted from disclosure under the Act.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license issued by an agency of this state or another state or country.<sup>1</sup> Gov't Code § 552.130(a)(1). We note the purpose of section 552.130 is to protect the privacy interests of individuals. Because privacy is a personal right that lapses at death, the right to privacy does not encompass information that relates to only a deceased individual. Accordingly, information pertaining solely to a deceased individual may not be withheld on privacy grounds. See *Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); see also Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Thus, section 552.130 is not applicable to the driver's license information of the deceased individual in the submitted information, and the sheriff's office may not withhold this information on that basis. However, the sheriff's office must withhold the driver's license information of the living individuals we have marked under section 552.130 of the Government Code.

In summary, to the extent the sheriff's office maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff's office must withhold any such information under section 552.101 in conjunction with common-law privacy. The sheriff's office must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.<sup>2</sup>

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>We note the information being released contains social security numbers. Section 552.147(b) authorizes a governmental body to withhold the social security number of a living person without the necessity of requesting an attorney general ruling. See Gov't Code § 552.147(b).

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/bhf

Ref: ID# 487336

Enc. Submitted documents

c: Requestor  
(w/o enclosures)