



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 24, 2013

Ms. Crystal Koonce
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2013-10622

Dear Ms. Koonce:

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# 491011.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for three specified reports and any records pertaining to the requestor and three named individuals. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you state a portion of the requested information is subject to a previous ruling from this office. In Open Records Letter No. 2013-06023 (2013) we concluded the sheriff's office: (1) must withhold the information pertaining to report 2012-05-00114 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; (2) must withhold the information pertaining to report 2012-11-00048 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; and (3) with the exception of basic information, may withhold the information pertaining to reports 2012-08-01217 and 2011-10-01015 under section 552.108(a)(2) of the Government Code. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the sheriff's office must continue to rely on Open Records Letter No. 2013-06023 as a previous determination and withhold or release the

previously ruled upon information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, you acknowledge, and we agree, the sheriff's office failed to meet the statutory deadlines imposed by section 552.301 of the Government Code for the remaining requested information. *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You raise section 552.101 of the Government Code for the information you have marked. We note some of the submitted information is subject to 552.137 of the Government Code.¹ Because sections 552.101 and 552.137 can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to 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 of the Government Code 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. This office also has

¹The 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).

found some kinds of medical information or information indicating disabilities or specific illnesses are protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information you have marked is highly intimate or embarrassing and of no legitimate public concern. Therefore, the sheriff's office must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). Accordingly, the sheriff's office must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the address has affirmatively consented to its release.²

In summary, the sheriff's office must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the address has affirmatively consented to its release. The remaining information must be released.³

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

²Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting a decision under the Act.

³We note the requestor has a special right of access to some of the information being released in this instance. *See* Gov't Code §§ 552.023(a) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles), .137(b). Because such information is confidential with respect to the general public, if the sheriff's office receives another request for this information from a different requestor, then the sheriff's office must again seek a ruling from this office.

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 "Eamon Briggs". The signature is written in a cursive style with a large initial "E" and "B".

Eamon D. Briggs
Assistant Attorney General
Open Records Division

EDB/som

Ref: ID# 491011

Enc. Submitted documents

c: Requestor
(w/o enclosures)