



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2013

Ms. Elizabeth Hanshaw Winn
Assistant County Attorney
Transactions Division
Travis County
P.O. Box 1748
Austin, Texas 78767-1748

OR2013-19716

Dear Ms. Winn:

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# 505412.

The Travis County Sheriff's Office (the "sheriff's office") received a request for a specified police report, including toxicology results. You state you have released some information to the requestor. 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 "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 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). We note because the

common-law right to privacy is a personal right that lapses at death, common-law privacy does not protect information that relates only to a deceased individual. *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), H-917 (1976); Open Records Decision No. 272 at 1 (1981).

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 the submitted information under section 552.101 in conjunction with common-law 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 office may not withhold the entirety of the submitted information under section 552.101 of the Government Code on that basis. However, upon review, we find portions of the submitted information, which we have marked, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the sheriff's office may not withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information may be subject to sections 552.1175 and 552.130 of the Government Code.¹ Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Upon review, we find the information we have marked consists of the home address, home telephone number, emergency contact information, date or birth, social security number, or family member information of an individual who may be among the types of individuals listed in section 552.1175(a), and the information is not held by the sheriff's office in an employment capacity. Thus, if the information we marked relates to an individual to whom section 552.1175 applies and the individual elects to restrict access to the information in

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

accordance with section 552.1175(b), then the sheriff's office must withhold the marked information under section 552.1175; however, the sheriff's office may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. If the individual at issue is not an individual to whom section 552.1175 applies or if no election is made, the sheriff's office may not withhold the marked information under section 552.1175 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. Accordingly, the sheriff's office must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the information we have marked under section 552.1175 of the Government Code if the information relates to an individual to whom section 552.1175 applies and the individual elects to restrict access to the information in accordance with section 552.1175(b); however, the sheriff's office may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. The sheriff's office must withhold the information we have marked under section 552.130 of the Government Code. The sheriff's office must release the remaining information.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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

²We note the information being released contains the requestor's driver's license information to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a) without the necessity of requesting a decision under the Act. *See* Gov't Code § 552.130(c). Therefore, if the sheriff's office receives another request for the same information from a person who would not have a right of access to the present requestor's private information, section 552.130(c) authorizes the sheriff's office to redact this requestor's driver's license information without requesting another ruling.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kristi L. Wilkins', written in a cursive style.

Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 505412

Enc. Submitted documents

c: Requestor
(w/o enclosures)