



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 26, 2009

Mr. David K. Walker  
County Attorney  
Montgomery County  
207 West Phillips  
Conroe, Texas 77301

OR2009-01003

Dear Mr. Walker:

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# 333380.

The Montgomery County Sheriff's Department (the "sheriff") received a request for all records, incident reports, recordings, and pictures regarding seven named individuals and two particular locations. 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. This section encompasses the doctrine of common-law privacy, which protects information that (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 satisfied. *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 courthouse 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. The present request, in part, requires the sheriff to compile unspecified law enforcement records concerning the individuals at issue. Therefore, to the extent the sheriff maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the sheriff must withhold such information under section 552.101 in conjunction with common-law privacy.

You assert the information in Exhibit B-2 is excepted from disclosure under common-law privacy. Common-law privacy also encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). In addition, this office has 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. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where the requestor knows the identity of the individual at issue and the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. Here, although you seek to withhold Exhibit B-2 in its entirety because the requestor knows the identity of the individual at issue, you have not demonstrated, nor does it otherwise appear, the requestor knows the nature of the incidents. Thus, this is not a situation where the information at issue must be withheld in its entirety on the basis of common-law privacy. However, we agree some of the information at issue is highly intimate or embarrassing and not of legitimate concern to the public. Accordingly, the sheriff must withhold the information we have marked in Exhibit B-2 under section 552.101 in conjunction with common-law privacy.

We note the submitted information contains Texas driver's license information.<sup>1</sup> Section 552.130 excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state." Gov't Code § 552.130(a)(1). Accordingly, you must withhold the Texas driver's license information we have marked under section 552.130 of the Government Code.

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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. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the information we have marked in Exhibit B-2 under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the Texas driver's license information we have marked in Exhibit B-2 under section 552.130 of the Government Code. The remaining 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](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 at (512) 475-2497.

Sincerely,



Emily Sitton  
Assistant Attorney General  
Open Records Division

EBS/eeg

Ref: ID# 333380

Enc. Submitted documents

c: Requestor  
(w/o enclosures)