



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 26, 2009

Mr. David K. Walker
Montgomery County Attorney
207 West Phillips 1st Floor
Conroe, Texas 77301

OR2009-07053

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# 348413 (No. 2009-1509).

The Montgomery County Sheriff's Department (the "department") received a request for records involving two named individuals during specified time intervals, including information relating to a specified arrest. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

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 exception 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the 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. United States 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 that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Except for the specified arrest record, the present request is for unspecified law enforcement records involving the named individuals. That aspect of this request requires the department to compile the named individuals' criminal histories and implicates their privacy interests. Therefore, to the extent that the department maintains any information other than the specified arrest record that depicts either of the named individuals as a suspect, arrested person, or criminal defendant, the department must withhold any such information under section 552.101 in conjunction with common-law privacy.

We note that the specified arrest record contains Texas driver's license information. Section 552.130 of the Government Code exempts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state.¹ See Gov't Code § 552.130(a)(1). We have marked the Texas driver's license information that the department must withhold under section 552.130.

In summary: (1) to the extent that the department maintains any information other than the specified arrest record that depicts either of the named individuals as a suspect, arrested person, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy; and (2) the department must withhold the marked Texas driver's license information in the specified arrest record under section 552.130 of the Government Code.² The remaining information in the arrest record 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.

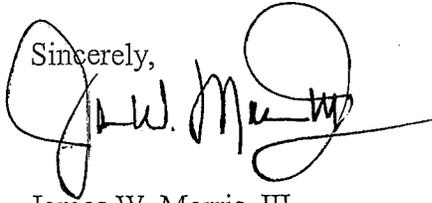
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free,

¹Unlike other exceptions to disclosure under the Act, this office will raise section 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

²We note that the specified arrest record also contains a social security number. Section 552.147(b) of the Government Code 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.

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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a large, looping initial "J" and a long horizontal stroke at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 348413

Enc: Submitted documents

c: Requestor
(w/o enclosures)