



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2009

Mr. Arthur Provenghi
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2009-13698

Dear Mr. Provenghi:

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# 357195.

The El Paso County Sheriff's Office (the "sheriff") received a request for information pertaining to a specified case number. You state you have released some of the requested information to the requestor. You claim that the remaining information is excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.130 of the Government Code. We have considered the exceptions 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 information that other statutes make confidential such as chapter 772 of the Health and Safety Code. Chapter 772 authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). You indicate the sheriff is within an emergency communication district that is subject to section 772.318. You claim the originating telephone number and address you have highlighted within Attachment C are confidential under section 772.318 of the Health and Safety Code. Thus, to the extent the originating telephone number and address you have

highlighted were furnished by a 9-1-1 service supplier, we agree the sheriff must withhold this information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 also 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 established. *Id.* at 681-82. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See* Open Records Decision No. 545 (1990). We note that Attachments C and D contain personal financial information that is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the sheriff must withhold the information we have marked within Attachments C and D under section 552.101 of the Government Code in conjunction with common-law privacy.

You raise section 552.108 of the Government Code for Attachment E, which provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [is excepted from required public disclosure] if:

...

(4) it is information that:

(a) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(b) reflects the mental impressions or legal reasoning of an attorney representing the state[.]

Gov't Code § 552.108(a)(4). Section 552.108(a)(4) is applicable to information that was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that reflects the mental impressions or legal reasoning of an attorney representing the state. In this instance, the information submitted as Attachment E consists of an El Paso district attorney's screening sheet. You state that this information was prepared by an attorney representing the state in anticipation of litigation or in the course of preparing for litigation and that this information reflects the attorney's mental impressions and legal

reasoning. Based on your representations and our review, we conclude that section 552.108(a)(4) is applicable to Attachment E, and the sheriff may withhold this information on that basis.¹

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See id.* § 552.130(a)(1)-(2). We note, however, that this exception protects personal privacy. Thus, because this requestor has a right of access to her own private information under section 552.023 of the Government Code, the sheriff may not withhold the requestor's Texas motor vehicle record information under section 552.130 and must release that information. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). However, the Texas motor vehicle record information not belonging to the requestor, which we have marked in Attachments B, C, and D, must be withheld under section 552.130. The remaining information you have highlighted does not constitute motor vehicle record information, and thus may not be withheld under section 552.130 of the Government Code.

In summary, to the extent the originating telephone number and address you have highlighted in Attachment C were furnished by a 9-1-1 service supplier, the sheriff must withhold this information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The sheriff must withhold the information we have marked within Attachments C and D under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff may withhold Attachment E under section 552.108(a)(4) of the Government Code. The sheriff must withhold the Texas motor vehicle record information not belonging to the requestor, which we have marked in Attachments B, C, and D, under section 552.130 of the Government Code. The remaining information must be released.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.

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

²Should the sheriff receive another request for these same records from a person who would not have a right of access to this requestor's private information, the sheriff should resubmit these records and request another decision. *See* Gov't Code §§ 552.301(a), .302. Furthermore, the remaining information includes social security numbers. 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.

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 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 357195

Enc. Submitted documents

cc: Requestor
(w/o enclosures)