



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 26, 2009

Mr. Roy L. Cordes, Jr.
Fort Bend County Attorney
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2009-15165

Dear Mr. Cordes:

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# 360267.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for records of all sheriff responses to a specific address from May 1, 2007 to the date of the request. You state you will release some information to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, you note the requestor has agreed to the redaction of third-party social security, driver's license, and state identification numbers. Accordingly, any of this information within the submitted documents is not responsive. The sheriff need not release non-responsive information in response to this request, and this ruling will not address that information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W. 2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd).

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy. Common-law privacy 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). The type of information considered intimate and 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 has also 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).*

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that 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 case, the requestor knows the identity of the subject of report no. 09-21737 as well as the nature of the information in the submitted report. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy. We conclude, therefore, that the sheriff must withhold report no. 09-21737 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Although you also seek to withhold the remaining offense report and two call sheets in their entirety, you have not demonstrated, nor does it otherwise appear, that the remaining information pertains to situations where the information must be withheld in its entirety on the basis of common-law privacy. However, we agree that portions of the remaining information are highly intimate or embarrassing and not of legitimate public interest. Accordingly, the sheriff must withhold the information we have marked in the remaining offense report and two call sheets under section 552.101 in conjunction with common-law privacy.

You raise section 552.108 of the Government Code for report no. 07-24471. Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Although you state this case is closed, you also state the victim was referred to the Justice of the Peace court for class C assault. Thus, we find you have failed to explain how this is a criminal case that concluded in a final result other than conviction or deferred adjudication. Therefore, we determine that

the sheriff has failed to demonstrate the applicability of section 552.108(a)(2) of the Government Code to report no. 07-24471, and it may not be withheld on this basis.

A portion of the remaining information is subject to section 552.130 of the Government Code. 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 [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130. Accordingly, the sheriff must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code.

In summary, the sheriff must withhold report no. 09-21737 in its entirety, as well as the information we have marked in the remaining documents under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the Texas motor vehicle record information we have marked pursuant to 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.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/rl

² We note the requestor has a special right of access to some of the information being released in this instance. Gov't Code § 552.023 (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the sheriff receives another request for this information from a different requestor, the sheriff must again seek a ruling from this office.

Ref: ID# 360267

Enc. Submitted documents

c: Requestor
(w/o enclosures)