



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2009

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

OR2009-18061

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# 365415.

The Montgomery County Sheriff's Office (the "sheriff") received a request for all reports involving a named individual from July 2000 to the present, including reports pertaining to specified incidents. You state you have released some of the requested information to the requestor. You claim that 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.

Initially, you state a portion of the requested information was the subject of a previous ruling issued by this office, Open Records Letter No. 2008-06499 (2008). In that ruling, this office concluded that the sheriff must withhold offense report number 06A009800 in its entirety under section 552.101 in conjunction with common-law privacy. As we have no indication that the law, facts, and circumstances on which this prior ruling was based have changed, you must continue to rely on this prior ruling as a previous determination and withhold offense report number 06A009800. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). With respect

to the information that was not previously ruled upon in Open Records Letter No. 2008-06499, we will address your argument against disclosure of this information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy, which protects information that (1) contains highly intimate or embarrassing information, 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 (Tex. 1976). The types 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. *See id.* at 683.

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 at issue and the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, the submitted information reveals that the requestor knows the identity of the individual involved as well as the nature of the information in the submitted reports. 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. Accordingly, to protect the privacy of the individual to whom the information relates, the sheriff must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the sheriff must continue to rely on Open Records Letter No. 2008-06499 as a previous determination and withhold offense report number 06A009800 in its entirety under section 552.101 in conjunction with common-law privacy. The submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 365415

Enc. Submitted documents

cc: Requestor
(w/o enclosures)