



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 3, 2010

Ms. Blanca E. Sanchez
Hidalgo County Sheriff's Office
P.O. Box 1228
Edinburg, Texas 78540

OR2010-03121

Dear Ms. Sanchez:

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# 372547.

The Hidalgo County Sheriff's Office (the "sheriff") received a request for any calls, sheriff visits, or reports pertaining to a listed address, the requestor, and two named individuals. 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.

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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (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 prongs of this test must be satisfied. *See id.* at 681-82. This office has found that 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). Further, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request requires the sheriff to compile unspecified law enforcement records concerning the two named individuals and the requestor. We note that the requestor would have a right of access under section 552.023 of the Government Code to any responsive information that would implicate his privacy interests. *See Gov't Code § 552.023(a)*; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). To the extent, however, the sheriff maintains law enforcement records depicting either of the two named individuals other than the requestor as a suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 in conjunction with common-law privacy. We note you have submitted information that does not depict the two named individuals as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of these individuals. Thus, we will address your remaining arguments against the disclosure of this information.

Section 552.101 also encompasses information made confidential by other statutes, such as the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides, in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982)*. Medical records may only be released in accordance with the MPA. *See Open Records Decision No. 598 (1991)*. Upon review, we conclude the information we have marked in Exhibits C and D constitutes medical records that may only be released in accordance with the MPA.

You raise section 552.101 in conjunction with common-law privacy for the remaining information. Common-law privacy also protects the types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation*, including 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 Indus. Found.*, 540 S.W.2d at 683. This office has found some kinds of medical information or information indicating disabilities or specific illnesses is protected by 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). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). 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 involved as well as the nature of the incident, the entire report must be withheld to protect the individual's privacy. You argue the remaining information in Exhibits C and D must be withheld in its entirety on the basis of common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Nevertheless, we find some of the remaining information in Exhibits C and D is highly intimate or embarrassing and not of legitimate public interest. Therefore, the sheriff must withhold the information we have marked in Exhibits C and D under section 552.101 in conjunction with common-law privacy. You have failed to demonstrate, however, how any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code 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."¹ Gov't Code § 552.130(a)(1). Accordingly, the sheriff must withhold the Texas driver's license numbers we have marked in Exhibit C under section 552.130.²

In summary, to the extent the sheriff maintains law enforcement records depicting either of the two named individuals other than the requestor as a suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 in conjunction with common-law privacy. The marked medical records in Exhibits C and D may only be released in accordance with the MPA. The sheriff must withhold the information we have marked in Exhibits C and D under section 552.101 in conjunction with common-law privacy. The sheriff must withhold the Texas driver's license numbers we have marked in Exhibit C

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note the requestor has a special right of access to his own Texas driver's license information. *See* Gov't Code § 552.023(a). However, because such information may be confidential with respect to the general public, if the sheriff receives another request for this information from an individual other than this requestor, the sheriff must again seek a ruling from this office.

under section 552.130 of the Government Code.³ The remaining information must be released.⁴

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# 372547

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

⁴We note the remaining information includes 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. Gov't Code § 552.147.