



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 4, 2011

Mr. David K. Walker  
Montgomery County Attorney  
207 West Phillips Suite 100  
Conroe, Texas 77301

OR2011-00133

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# 405446 (No. 2010-4378).

The Montgomery County Sheriff's Department (the "sheriff") received a request for information relating to a named individual. You claim 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). We also find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request is for records of "all arrests" involving the named individual. This request for unspecified law enforcement records requires the sheriff to compile the named individual's criminal history and thereby implicates his privacy interests. Thus, to the extent the sheriff maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, any such information is generally confidential under section 552.101 of the Government Code in conjunction with common-law privacy. In this instance, however, the requestor may be an authorized representative of the individual whose privacy interests are implicated. As such, the requestor would have a right of access under section 552.023 of the Government Code to any information relating to the named individual that the sheriff would otherwise be required to withhold on privacy grounds.<sup>1</sup> See Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, if the requestor is the named individual's authorized representative, then any information maintained by the sheriff that depicts the individual as a suspect, arrested person, or criminal defendant must be released to this requestor pursuant to section 552.023 of the Government Code.<sup>2</sup> But if the requestor is not the individual's authorized representative, then the sheriff must withhold any such information 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](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

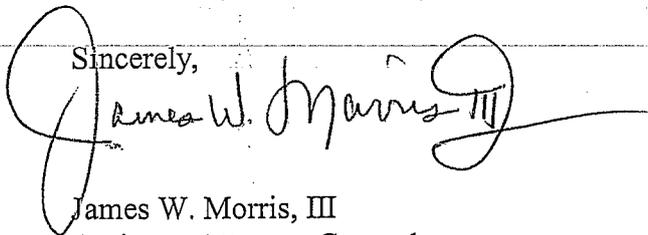
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<sup>1</sup>Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

<sup>2</sup>We note that if the requestor is the named individual's authorized representative, then she would also have a right of access to any other information relating to the individual that the sheriff would ordinarily be required to withhold on privacy grounds. See Gov't Code § 552.023(a); ORD 481 at 4.

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish extending to the right.

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

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JWM/vb

Ref: ID# 405446

Enc: Submitted documents

c: Requestor  
(w/o enclosures)