



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 25, 2011

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

OR2011-02811

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# 410105.

The Montgomery County Sheriff's Department (the "sheriff") received a request for all information pertaining to the arrest of a named individual that occurred on a specified date. You state the sheriff will release a majority of the requested information. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.108 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 the common-law right of 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. *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. 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 found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public

disclosure under 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). Whether information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983). Upon our review, we agree the information in Exhibit B-2 is highly intimate or embarrassing and of no legitimate public concern and is generally confidential under common-law privacy.

However, the requestor is the father of the individual whose privacy interests are at issue and may be acting as a representative of that individual. Pursuant to section 552.023 of the Government Code, "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)-(b). Thus, if the requestor is acting as the authorized representative of his son, then he has a right of access to the information in Exhibit B-2 pursuant to section 552.023, and the sheriff may not withhold this information under section 552.101 in conjunction with common-law privacy. As you raise no other exceptions, in such case the information in Exhibit B-2 must be released in its entirety. If the requestor is not acting as the authorized representative of his son, then the sheriff must withhold the information in Exhibit B-2 under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide supporting documentation from an Assistant District Attorney for Montgomery County representing, that the report for case number 10K0593 in Exhibit B-1 relates to a criminal case that is pending prosecution. Based upon your representation and our review, we conclude that release of the information you have marked in Exhibit B-1 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable and the sheriff may withhold the information you have marked in Exhibit B-1 under section 552.108(a)(1) of the Government Code.

In summary: (1) if the requestor is not acting as the authorized representative of the individual whose privacy interests are at issue, then the sheriff must withhold the information in Exhibit B-2 under section 552.101 of the Government Code in conjunction with common-law privacy; and (2) the sheriff may withhold the information you have marked in Exhibit B-1 under section 552.108(a)(1) of the Government Code.

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,

A handwritten signature in cursive script that reads "Lindsay E. Hale". The signature is written in black ink and is positioned above the typed name.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/em

Ref: ID# 410105

Enc. Submitted documents

c: Requestor
(w/o enclosures)