ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2011

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

OR2011-06239

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# 416773 (ORR# 2011-0812).

The Montgomery County Sheriff's Department (the "sheriff") received a request for all calls and complaints originating from a specific address from 2004 to May of 2007. You claim 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses other laws that make information confidential, such as section 48.101 of the Human Resources Code, which provides in relevant part:

> (a) The following information is confidential and not subject to disclosure under [the Act]:
>
> (1) a report of abuse, neglect, or exploitation made under this chapter;
>
> (2) the identity of the person making the report; and
>
> (3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

> (b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by [the Texas Department of Family and Protective Services] or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101. Section 48.051 of the Human Resources Code provides "a person having cause to believe that an elderly or disabled person is in the state of abuse, neglect, or exploitation" shall report certain prescribed information to the Texas Department of Family and Protective Services ("DFPS") or another appropriate state agency.[1] *See id.* § 48.051(a). The only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are DFPS and certain other state agencies, depending on the circumstances surrounding the incident. *See id.* §§ 48.151, .152, .252, .301. Thus, reports made to a police department or sheriff's office generally are not subject to section 48.101. We note a portion of the submitted information reflects the sheriff forwarded the matter to the Adult Protective Services Division (the "division") of the DFPS to be used in an investigation by the division under chapter 48 of the Human Resources Code. Because the Legislature expressly made all information used by the division in its Chapter 48 investigations confidential, the information we have marked is confidential under section 48.101. *See id.* § 48.101(a)(3). Such information must not be released to the public, except for a purpose consistent with chapter 48 and as provided by a department or investigating state agency rule or federal law. *See id.* § 48.101(b). *But see id.* § 48.101(c), (d), (e), (f) (permitting release of confidential information in certain circumstances). You do not indicate, nor does it appear, that an exception to confidentiality applies in this instance. Accordingly, we conclude the sheriff must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.

Section 552.101 also 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 prongs of this test must be established. *See id.* at 681-82. The type of information considered intimate or 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. 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

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[1]*See* Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Gen. Laws 611, 641 ("A reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.").

instance, case number G060173988 reveals the requestor knows the identity of the individual involved 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. Thus, the sheriff must withhold case number G060173988, which we have marked, under section 552.101 in conjunction with common-law privacy.

We also note that some of the remaining information relates to alleged sexual assaults. Generally, only information that either identifies or tends to identify a victim of sexual assault or another sex-related offense must be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when this identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decisions Nos. 393 (1983), 339 (1982); *see also* Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). In this instance, case numbers G060240423 and G060272167 demonstrate that the requestor knows the identity of the alleged sexual assault victim. Accordingly, the sheriff must withhold case numbers G060240423 and G060272167 in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Although you seek to withhold the remaining submitted reports in their entirety, you have not demonstrated, nor does it otherwise appear, that these are situations where the entirety of the remaining information must be withheld on the basis of common-law privacy. However, we agree portions of the remaining information are highly intimate or embarrassing and not of legitimate public interest. Accordingly, the sheriff must withhold the remaining information we have marked 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[.]"[2] Gov't Code § 552.130(a)(1). We note section 552.130 protects personal privacy. Thus, the requestor has a right of access to his Texas driver's license information under section 552.023 of the Government Code. *Id.* § 552.023 (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). Accordingly, the sheriff must withhold the driver's license information not belonging to the requestor, which we have marked, pursuant to section 552.130 of the Government Code.[3]

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[2]The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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

In summary, the sheriff must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code. The sheriff must withhold case numbers G060173988, G060240423, and G060272167 in their entirety as well as the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the information we have marked pursuant to section 552.130 of the Government Code. The sheriff must release the remaining information.[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,

Paige Lay

Paige Lay
Assistant Attorney General
Open Records Division

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[4]We note the information being released contains social security numbers belonging to individuals other than the requestor. 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. *See* Gov't Code § 552.147(b). However, because section 552.147 protects personal privacy, the requestor has a right of access to his social security number under section 552.023 of the Government Code and it may not be withheld from him. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). We also note the information being released contains confidential information to which the requestor has a right of access. *See id.* § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Thus, if the sheriff receives another request for this particular information from a different requestor, then the sheriff should again seek a decision from this office.

Ref: ID# 416773

Enc. Submitted documents

cc: Requestor
(w/o enclosures)