



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 17, 2011

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

OR2011-06949

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# 417753.

The Montgomery County Sheriff's Department (the "sheriff") received a request for information related to three named individuals and a specified address. 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. This section encompasses the common-law right to 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. *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 demonstrated. *Id.* at 861-82. 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. U.S. 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). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an

individual solely as a victim, witness, or involved person is not private because it is not criminal history information, and therefore, may not be withheld under section 552.101 on that basis.

In this instance, the request is for all records pertaining to three named individuals. We find the request requires the sheriff to compile unspecified law enforcement records concerning the named individuals and implicates their privacy rights. Thus, to the extent the sheriff maintains law enforcement records depicting the named individuals as either suspects, arrestees, or criminal defendants, the sheriff must withhold any such information from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note that you have submitted information that does not depict the named individuals as suspects, arrestees, or criminal defendants. This information is not part of a compilation of the individuals' criminal histories. Accordingly, we will address your remaining argument under section 552.101 of the Government Code.

You seek to withhold Exhibit B-1 in its entirety under section 552.101 in conjunction with common-law privacy. Common-law privacy also protects other types of information. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses to be 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). 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. Although you seek to withhold the information in Exhibit B-1 in its entirety, you have not demonstrated, nor does it appear, that this is a situation where the information at issue must be withheld in its entirety on the basis of common-law privacy. However, we agree that some of the information at issue is highly intimate or embarrassing and not of legitimate concern to the public. Accordingly, the sheriff must withhold the information we have marked in Exhibit B-1 under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated the remaining information in Exhibit B-1 is highly intimate or embarrassing and not of legitimate public concern. Therefore, no portion of the remaining information in Exhibit B-1 may be withheld under section 552.101 in conjunction with common-law privacy.

We note that the remaining information contains Texas motor vehicle record information, which we have marked. Section 552.130 excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a

motor vehicle title or registration issued by an agency of this state.<sup>1</sup> See Gov't Code § 552.130(a)(1), (2). The sheriff must withhold the information we have marked under section 552.130 of the Government Code.<sup>2</sup>

In summary, to the extent the sheriff maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the sheriff must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the information we have marked in Exhibit B-1 under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.<sup>3</sup>

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 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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

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

<sup>2</sup>We 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 and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>3</sup>We note the information being released contains social security numbers. 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. See Gov't Code § 552.147.

Ref: ID# 417753

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)