



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2011

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

OR2011-09210

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# 422576 (ORR# 2011-1757).

The Montgomery County Sheriff's Office (the "sheriff") received a request for offense report numbers 09A011944, 11A000271, 09A020003, and 09A020033. You inform us the requestor has withdrawn his request for offense report 09A020003 and state you will provide him with offense report numbers 09A011944 and 11A000271. You claim offense report 09A020033 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. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. 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 instance, you state, and the report at issue reveals, that 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

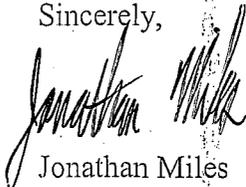
the incident from the requestor would not preserve the subject individual's common-law right of privacy.

However, the requestor is the spouse of the individual whose privacy is at issue. Thus, the requestor may be this individual's authorized representative. If the requestor is acting as his spouse's authorized representative, then he has a special right of access to information that would ordinarily be withheld to protect his spouse's privacy interests. *See* Gov't Code § 552.023(a) (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). Thus, if the requestor is not acting as his spouse's authorized representative, then, to protect the privacy of the individual to whom the information relates, the sheriff must withhold the submitted report in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is acting as his spouse's authorized representative, the sheriff may not withhold the submitted information under section 552.101 in conjunction with common-law privacy, and, as you raise no other exceptions to disclosure, and the submitted information must be released.¹

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

¹We note that, in this instance, the requestor has a right of access to the information being released that would otherwise be confidential with regard to the general public. *See* Gov't Code § 552.023(a). Therefore, if the sheriff receives another request for this information from a person who does not have a special right of access to this information, the sheriff should submit this same information and request another decision from this office. *See id.* §§ 552.301(a), 302; Open Records Decision No. 673 (2001).

Ref: ID# 422576

Enc. Submitted documents

c: Requestor
(w/o enclosures)