



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2011

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2011-14966

Dear Ms. Lentz:

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# 433044.

The Williamson County Sheriff's Office (the "sheriff") received a request for a specified audio recording of a conversation between a named sheriff's detective and his supervisors. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.117 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. 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. The types 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. In addition, this office has found 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). We note, however, section 552.023 of the Government Code gives a person or a person's authorized representative 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 disclosure by laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023.

In this instance, the requestor is the attorney for the detective named in the request. As his client's representative, the requestor has a right of access to the information concerning his client; therefore, the sheriff may not withhold any of the named detective's information from the requestor on the basis of common-law privacy. *See id.* (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). We note, however, a portion of the submitted audio recording contains private information pertaining to another peace officer employed by the sheriff. Upon review, we find this information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the sheriff must withhold this information, which we have indicated, under section 552.101 of the Government Code in conjunction with common-law privacy.

You assert portions of the submitted audio recording are excepted under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). We note section 552.117 of the Government Code protects personal privacy. Thus, the requestor, as the attorney of the named detective, has a right of access to his client's private information under section 552.023 of the Government Code. Therefore, the sheriff may not withhold from this requestor any information pertaining to the named detective under section 552.117. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987).

We note, however, a portion of the submitted audio recording contains personal information pertaining to another peace officer employed by the sheriff. Therefore, the sheriff must withhold this information, which we have indicated, under section 552.117(a)(2) of the Government Code.

You claim the sheriff lacks the technical capacity to redact the information at issue from the submitted audio recording. However, because the sheriff had the ability to copy the submitted audio recording in order to submit the requested information for our review, we believe the sheriff has the capacity to produce a copy of only the non-confidential portions

of the information at issue. Therefore, we find the sheriff must withhold the information in the audio recording we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy and under section 552.117(a)(2) of the Government Code. The sheriff must release the remaining information in the audio recording to this requestor.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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 433044

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a); 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.