



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2013

Mr. Daniel Plake
Assistant Montgomery County Attorney
207 West Phillips, Suite 100
Conroe, Texas 77301

OR2013-05494

Dear Mr. Plake:

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# 483157.

The Montgomery County Sheriff's Department (the "department") received a request for records for calls made to a specified address on nine specified dates, involving two named individuals. You state the department will redact driver's license information under section 552.130(c) of the Government Code and security numbers under section 552.147(b) of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a)(1) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). 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 id.* § 552.147(b).

²Although you also raise section 552.108 of the Government Code, you have provided no arguments in support of the applicability of that exception. Therefore, the department may not withhold any of the submitted information under section 552.108. *See* Gov't Code §§ 552.301(e)(1)(A) (governmental body must provide written comments in support of applicability of each exception it claims), .302; *see also id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver).

Initially, we note you have only submitted information pertaining to two of the dates specified in the request. To the extent information responsive to the remainder of the request existed on the date the department received the request, we assume you have released it. See Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. See Gov't Code §§ 552.301(a), .302.

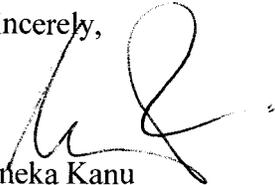
Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly 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. *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 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. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure), 422 (1984), 343 (1982). Upon review, we find some of the submitted information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, no portion of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to disclosure, the department must release the remaining information.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 483157

Enc. Submitted documents

c: Requestor
(w/o enclosures)