



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2013

Mr. J.D. Lambright
County Attorney
County of Montgomery
207 West Phillips, Suite 100
Conroe, Texas 77301

OR2013-07456

Dear Mr. Lambright:

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# 486469 (County ORR# 2013-1120).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for a copy of a police report pertaining to an incident that occurred on February 13, 2013 at 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 common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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. *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. 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).

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated 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 seek to withhold the entirety of the basic information under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Accordingly, the sheriff's office may not withhold the entirety of the submitted information under section 552.101 of the Government Code on that basis. However, upon review, we find the information we have marked in Exhibit B constitutes information that is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, the sheriff's office must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have not demonstrated how the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the remaining information may not be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's or driver's license or permit issued by any agency of this state or another state or country is excepted from public release.¹ Gov't Code § 552.130(a)(1). Upon review, we find the sheriff's office must withhold the driver's license information we have marked in Exhibit B under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130. The sheriff's office must withhold this same information from the duplicate information in Exhibit C on the same ground. The remaining information must be released.²

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

²We note the information being released contains confidential information to which the requestor has a right of access. *See* Gov't Code § 552.023(a). If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/tch

Ref: ID# 486469

Enc. Submitted documents

c: Requestor
(w/o enclosures)