



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 13, 2017

Mr. Adam Anderson
Assistant County Attorney
Montgomery County
501 North Thompson, Suite 300
Conroe, Texas 77301

OR2017-07851

Dear Mr. Anderson:

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# 653335 (ORR# 17PIA037).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for a specified incident report. The sheriff's office claims the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

The submitted information contains court-filed documents that are subject to section 552.022(a)(17) of the Government Code, which provides the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). Although the sheriff's office asserts the information subject to section 552.022(a)(17), which we have marked, is excepted from disclosure under section 552.108, this section is discretionary and does not make information confidential

under the Act. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the sheriff's office may not withhold the information subject to section 552.022(a)(17) under section 552.108. We also note common-law privacy is not applicable to information contained in public records. *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain). Therefore, the sheriff's office must release the information we have marked under section 552.022(a)(17) of the Government Code.

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 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find some of the remaining information to be highly intimate or embarrassing and not of legitimate concern to the public. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entire report must be withheld to protect the individual's privacy. In this instance, withholding only the individual's identity or certain details of the remaining information from this requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the sheriff's office must withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.¹

To conclude, the sheriff's office must release the information we have marked under section 552.022(a)(17) of the Government Code.² The sheriff's office must withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.


¹As our ruling is dispositive, we do not address the argument of the sheriff's office to withhold this information.

²We note the information being released contains an e-mail address to which the requestor has a right of access under section 552.137(b) of the Government Code. *See* Gov't Code § 552.137(b). However, Open Records Decision No. 684 (2009) is a previous determination authorizing all governmental bodies to withhold specific categories of information without the necessity of requesting an attorney general decision, including e-mail addresses of members of the public under section 552.137 of the Government Code. Thus, if the sheriff's office receives another request for this same information from a person who does not have a right of access to it, Open Records Decision No. 684 authorizes the sheriff's office to redact the e-mail address at issue without the necessity of requesting an attorney general decision.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 653335

Enc. Submitted documents

c: Requestor
(w/o enclosures)