



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 15, 2017

Mr. Thomas M. Gilliland
Public Information Officer
Harris County Sheriff's Office
1200 Baker Street
Houston, Texas 77002

OR2017-10341

Dear Mr. Gilliland:

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# 663907 (HCSO File No. 14SO700595).

The Harris County Sheriff's Office (the "sheriff's office") received a request for a specified 9-1-1 call transcript. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the sheriff's office's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The sheriff's office received the request for information on March 21, 2017. Accordingly, you were required to provide the information required by section 552.301(b) by April 11, 2017. However, the envelope in which the department provided the information required by section 552.301(b) was postmarked April 19, 2017. *See id.* § 552.308(a)(1)

(describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we conclude the sheriff's office failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The sheriff's office claims sections 552.101 and 552.108 of the Government Code for the submitted information. Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address the sheriff's office's argument under this exception against release of the submitted information. However, we find the sheriff's office has failed to establish a compelling reason to address its remaining claimed exception.

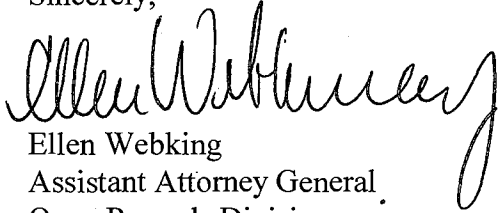
Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find none of the submitted information is highly intimate or embarrassing information or is of legitimate public interest. Therefore, none of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Therefore, the sheriff's office must release the submitted 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.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,

A handwritten signature in black ink, appearing to read "Ellen Webking". The signature is written in a cursive style with a large, looping final flourish.

Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 663907

Enc. Submitted documents

c: Requestor
(w/o enclosures)