



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 18, 2019

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

OR2019-01665

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# 746950 (ORR# 18PIA551).

The Montgomery County Sheriff's Office (the "sheriff's office") received three requests from the same requestor for several categories of information related to three specified arrests of a named individual. The sheriff's office claims the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions the sheriff's office claims and reviewed the submitted information.

Initially, we note the sheriff's office has submitted video recordings, photographs, and 9-1-1 call recordings related to the specified incidents, but not submitted information responsive to the remaining categories of the request for information. To the extent any additional responsive information existed on the date the sheriff's office received the request, we assume the sheriff's office has released it. If the sheriff's office has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. The sheriff's office asserts, and

we agree, the submitted video recordings contain confidential motor vehicle record information that is excepted from disclosure under section 552.130. In this instance, the sheriff's office states it does not possess the technological capability to redact information from video files. Thus, we agree the sheriff's office must withhold the entireties of the submitted video recordings under section 552.130 of the Government Code.¹ See Open Records Decision No. 364 (1983). However, the remaining information does not consist of video recordings and the sheriff's office may not withhold the remaining information in its entirety on that basis. Upon review, we find some of the remaining information, which we noted, consists of information that is confidential under section 552.130 of the Government Code. The sheriff's office must withhold the information we noted under section 552.130.

Section 552.101 of the Government Code excepts "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 constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After review of the remaining information at issue, we find some of the remaining information, which we have noted, implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the sheriff's office must withhold the information we noted under section 552.101 in conjunction with constitutional privacy.

Section 552.101 of the Government Code also 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). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. See, e.g., Open Records Decision Nos. 545 (1990) (common-law

¹As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). Upon review, we find some of the remaining information, which we noted, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the sheriff's office must withhold the information we noted under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the sheriff's office must withhold the entireties of the submitted video recordings, as well as the additional information we noted, under section 552.130 of the Government Code. The sheriff's office must withhold the information we noted under section 552.101 of the Government Code in conjunction with constitutional privacy and must withhold the information we noted under section 552.101 in conjunction with common-law privacy. The sheriff's office 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.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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 746950

Enc. Submitted documents

c: Requestor
(w/o enclosures)