



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 27, 2022

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

OR2022-02394

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# 927231 (Ref. No. 21PIA414).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for two specified 9-1-1 calls and transcripts. You state you have released some information to the requestor. You claim 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 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). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the information must be withheld in its entirety to protect the individual's privacy.

In this instance, the requestor knows both the identity of the individual involved as well as the nature of the incident in some of the submitted information. Therefore, withholding only the individual's identity or certain details of this incident from the 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 information we have marked and indicated in its entirety from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. However, the sheriff's office has not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the remaining information must be withheld on the basis of common-law privacy. Accordingly, the sheriff's office may not withhold the entirety of the remaining information under section 552.101 of the Government Code on that basis. However, upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the sheriff's office must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, the sheriff's office has failed to demonstrate any of the remaining information is subject to common-law privacy, and it may not be withheld under section 552.101 on that basis. 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/mo

Ref: ID# 927231

Enc. Submitted documents

c: Requestor
(w/o enclosures)