



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 22, 1994

Ms. Roberta A. Lloyd
Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR94-740

Dear Ms. Lloyd:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28953.

A former employee of the Harris County Constable of Precinct 5 requested his entire personnel file. You say the constable has released some of the requested information. You seek to withhold portions of the requested information from required public disclosure based on sections 552.101, 551.107(1), and 552.108 of the Government Code.

Section 552.101 of the Government Code excepts from required public disclosure information considered to be confidential by law. The file contains some information from the National Crime Information Center ("NCIC") obtained through the Interstate Identification Index. We agree that this information is excepted from required disclosure based on section 552.101 of the Government Code. *See* Open Records Decision No. 565 (1990) at 10-12.¹

However, some of the teletype information identified as NCIC information is not in fact NCIC information. Some of the teletype information appears to be from the Texas Crime Information Center ("TCIC"). In addition, some of the teletype information consists of driving record information and information about a particular court case. The

¹We note that the requestor is not the subject of the information you identified as NCIC information.

driving record information and the information about the court case are public information and must be released. The TCIC information must be withheld from required public disclosure under section 552.101 of the Government Code. *See United States Dept. of Justice v. Reporters' Committee for Freedom of the Press*, 489 U.S. 749 (1989); Gov't Code § 411.081.

Section 552.107(1) of the Government Code states that information is excepted from required public disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

This exception applies only to information that reveals attorney advice and opinion or client confidences. *See Open Records Decision No. 574 (1990)*. You raise this exception in regard to portions of several documents which contain the substance of conversations with an assistant city attorney. We agree that these portions contain attorney advice and opinion. We have marked the information that the county may withhold based on section 552.107(1) of the Government Code.

The records also contain private information regarding an allegation of sexual harassment. This information must not be released pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied). We have marked the records accordingly.

We next consider your claims under section 552.108 of the Government Code. In general, section 552.108 applies to the internal records of law enforcement agencies and prosecutors when their release would unduly interfere with law enforcement and crime prevention. *See Open Records Decision No. 531 (1989) at 2*. The exception reads as follows:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021.

You first seek to withhold under this exception three activity reports or "log sheets." You state that

[i]f disclosed, these reports could be used to ascertain patrol schedules or patterns, and thus, potentially be used to interfere with law enforcement by the Constable's office. Also, there may be a common law privacy interest associated with those calls on the reports and the persons who requested such calls.

These reports list the calls received and disposed of on certain days two years ago. They contain entries concerning the time of the call, the type of call, the address and the disposition of the call. These activity reports contain information that is similar to the information on a police radio log. This office has determined that the information on a police department's radio log or radio card is not ordinarily excepted from disclosure under section 552.108. *See Open Records Decision No. 394 (1983) at 4.* Moreover, we do not understand how these reports reveal information about patrol patterns or schedules so as to interfere with law enforcement by the constable's office. We, therefore, conclude that the county may not withhold the activity reports based on section 552.108 of the Government Code.

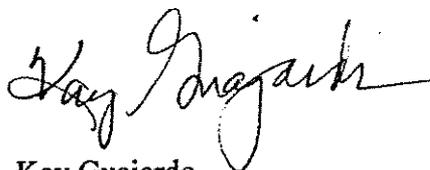
As for the privacy interests of the persons who made calls to the constable's office, we note that none of the reports contains the names of the callers. However, the addresses on the report could be used to identify a caller. A caller's right to privacy could be implicated by the release of the information on the activity report if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

We note that the identity of a complainant who is the victim of a serious and embarrassing crime is protected from required public disclosure by a common-law right to privacy. *See Open Records Decision Nos. 438 (1986); 393 (1983).* However, it is not apparent to us that the activity reports contain information that implicates the privacy rights of a caller.

You also claim section 552.108 applies to information that identifies an individual who filed a complaint with the constable's office against a sergeant. You are concerned that the complainant will be subjected to retaliation or intimidation. Generally, information that identifies someone who filed a complaint against a law enforcement officer is public information. *See Open Records Decision No. 329 (1982) at 2.* Moreover, the information you enclosed indicates that the sergeant knows the identity of the complainant. We, therefore, conclude that the county may not withhold the information that identifies the complainant based on section 552.108 of the Government Code.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/rho

Ref.: ID# 28953

Enclosures: Marked documents

cc: Mr. Justin C. Melody
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(w/o enclosures)