



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 22, 1998

Sheriff John Hobson
Anderson County Sheriff's Office
1200 E. Lacy
Palestine, Texas 75801

OR98-0215

Dear Sheriff Hobson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 112142.

The Anderson County Sheriff's Office (the "sheriff's office") received a request for "the names, addresses and offense[s] for all persons arrested" in Anderson County. You assert that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the representative sample of documents submitted.¹

Initially, we note that the request is for information "once each week on a continuing basis." A governmental body need not comply with a standing request to provide information on a weekly basis, Open Records Decision No. 476 (1987), or to treat a request as embracing information prepared after the request was made, Open Records Decision No. 452 (1986).

Section 552.108, the "law enforcement exception," excepts from public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state [and]

(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 . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

We first address case number 9700947. You state that this offense report is a pending case. However, "basic information about an arrested person, an arrest, or a crime" is not excepted from required public disclosure. Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. *See generally Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.3d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Because the request for the "names, addresses and offense[s] for all persons arrested" in Anderson County consists of basic information, the

requested information is not excepted from disclosure under section 552.108. Moreover, basic information in an offense report generally may not be withheld under section 552.103. Open Records Decision No. 362 (1983).

You also contend that privacy rights except the requested information from public disclosure under section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

The constitutional right to privacy protects two interests. Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. Open Records Decision No. 600 (1992) at 4. The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.*

The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 (1987) at 5-7 (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs." *See* Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

We have reviewed your privacy arguments, and we conclude that privacy rights do not except the requested information from public disclosure because the public has a legitimate interest in the requested information. Thus, you may not withhold the requested information under section 552.101 of the Government Code.

Next, we address case number 9700632. Although the requested information is basic information that is generally not excepted from public disclosure by sections 552.103 and 552.108, in this case, the requested information is confidential pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Section 552.101 encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and

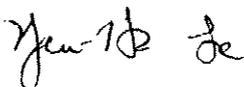
(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

The basic information at issue resulted from a charge of sexual assault of a child. We are not aware of any rules promulgated by the sheriff's office which permit the dissemination of this type of information. Accordingly, the requested information in case number 9700632 is made confidential by section 261.201 of the Family Code and must be withheld from disclosure under section 552.101 of the Government Code. *See* Open Records Decision No. 440 (1986) (applying former Fam. Code § 34.08).

In summary, basic information is not excepted from public disclosure by either section 552.103 or 552.108, or the right to privacy as incorporated by section 552.101. We caution, however, that the requested basic information may be confidential by law, such as section 261.201 of the Family Code. *See* Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

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Ref: ID# 112142

Enclosures: Submitted documents

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(w/o enclosures)