

January 29, 1999

Ms. Sara Fauls  
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OR99-0282



OFFICE OF THE  
ATTORNEY GENERAL  
STATE OF TEXAS

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Dear Ms. Fauls:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121688.

The Copperas Cove Police Department (the department) received a request for all information concerning the investigation that led to the conviction of James Blua for robbery. The requestor also seeks all incident or offense reports of similar robberies occurring in Coryell County either six months before or up to six months after June 4, 1995, and all reports relating to a robbery committed by John Willard and Andrew Harrelson. You claim that the requested information is excepted from required public disclosure by sections 552.101, 552.103, and 552.108 of the Government Code. You have submitted to this office thirteen Exhibits which relate to Mr. Blua's conviction.

Section 552.108 of the Government Code provides in part:

(a) Information held by 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 if:

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

(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;

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

(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 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;

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

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. You generally argue that because all of the information is "the result of a law enforcement agency's detection, investigation, and prosecution of a crime," that the information may be withheld under section 552.108. A governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why section 552.108 applies. *See* Gov't Code §§ 552.108, .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). First, you have not stated that the requested information pertains to an ongoing criminal investigation or prosecution nor have you explained how or why its release would interfere in some way with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1); *See, e.g.,* Open Records Decision Nos. 553 (1990), 413 (1984), 143 (1976), 127 (1976); *cf.* Open Records Decision Nos. 216 (1978), 133 (1976) (release of routine investigation

procedures, techniques that are commonly known, and routine personnel information generally do not interfere with law enforcement and crime prevention). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. It appears here that the subjects of the specific reports you seek to withhold were indeed convicted. Lastly, you do not assert that the information at issue was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. We do not believe that you have shown the applicability of any provision contained in section 552.108. Since you have not shown the applicability of section 552.108, the requested information may not be withheld on that basis.

You next claim that all of the requested information may be withheld under section 552.103. Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990)

You claim that the requested information may be withheld because the defendants in the requested cases "may not have exhausted all of their appellate and post-conviction remedies." The department, however, is not a party to any of these potential prosecutions. You have not shown that the department has a litigation interest. Absent a letter or other documentation from the District Attorney's Office or the prosecuting attorney with the litigation interest requesting that the information not be released, we conclude that you have not met your section 552.103 burden. See Open Records Decision Nos. 469 at 2 (1987), 141 (1976), 121 (1976). Therefore, the requested documents may not be withheld pursuant to section 552.103.

You assert that “any anonymous information obtained during the course of the investigation of these robberies is subject to the informer’s privilege” and not subject to disclosure. Texas courts have recognized the informer’s privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer’s identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer’s privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law enforcement within their particular spheres.” Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). We first point out that if the department has “anonymous information,” release of the information could not identify any person from whom the information was obtained because their identity would not be known; if they are anonymous, they are unidentified. Further, the privilege protects reports of a violation of a criminal or civil statute subject to certain exceptions, not simply any information. *See* TEX. R. CRIM. EVID. 508(c). Lastly, you do not point to any specific person or particular information that you wish to withhold under this exception. Nor does it appear that there are any confidential informants in the records submitted to this office. We do not believe that you have established that any information may be withheld under the informer’s privilege. Gov’t Code § 552.301(b)(1).

You additionally claim that other portions of the information may be withheld because it contains confidential social security numbers and information protected by privacy. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code.<sup>1</sup> A social security number or “related record” may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Open Records Act on the basis of that federal provision. We caution, however, that section 552.353 of the Open Records Act

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<sup>1</sup>Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”

imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

Lastly, you contend that some of the requested information is protected by privacy. Section 552.101 encompasses both common-law and constitutional privacy. Common-law privacy 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 at 1 (1992).

The constitutional right to privacy protects two interests. Open Records Decision No. 600 at 4 (1992) (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 at 4 (1992). 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 at 5-7 (1987) (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 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), and information concerning the intimate relations between individuals and their family members. *See* Open Records Decision

No. 470 (1987). We have examined the submitted records and find no information protected by a right of privacy.

Notwithstanding the above, there is some information in the requested records you must withhold. Section 552.130 of the Government Code provides in relevant part as follows:

(a) Information is excepted from the requirement of [public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state[.]

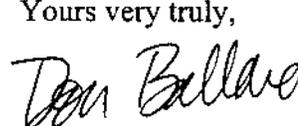
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(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Gov't Code § 552.130. Thus, you must withhold any information that relates to a motor vehicle operator's or driver's license or permit and a motor vehicle title or registration issued by an agency of this state. We have marked the type of information which you must withhold pursuant to section 552.130. With the exception of information protected by section 552.130, the department must release the requested information, unless it is otherwise confidential by law.

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,



Don Ballard  
Assistant Attorney General  
Open Records Division

Ms. Sara Fauls - Page 7

Ref: ID# 121688

Enclosures: Marked documents

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