OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

November 24, 1999

Ms. Deanie Bostick-Martin
Records System Supervisor
City of Lubbock
916 Texas Avenue
P.O. Box 2000
Lubbock, Texas 79457

OR99-3389

Dear Ms. Bostick-Martin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129696.

The City of Lubbock (the "city") received a request for call sheets and reports concerning a specified address. You have supplied to this office for review copies of reports 98-017214, 99-008420, 98-003869, 98-001637, 99-009055, 99-032668, and 98-017208. You indicate that the "front page" information from these reports and the responsive call sheets will be released to the requestor; if you have not already released this information, you must do so. *See Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Gov't Code 552.108(c). You seek to withhold the remaining information, claiming that it 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 reviewed the submitted information.

Section 552.103 excepts from disclosure information "relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a politic 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." Gov't Code § 552.301. You contend that the subject information relates to criminal prosecutions. Neither the city nor a city employee is a party in these litigated cases. A governmental body may assert the litigation exception for information that a district attorney determines relates to a pending criminal case. Open Records Decision No. 469 (1987). You represent that the City Attorney's Office has determined that this information should be withheld; however, you have not indicated that a prosecutor has made that request. We conclude that you have not shown how section 552.103 of the Government Code excepts the subject information from disclosure.

Your argument invokes several provisions of section 552.108 of the Government Code. That section reads

(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; or

(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; or

(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.

Note that "basic information" is not excepted by this section. Gov't Code 552.108(c). We believe such basic information refers to the "front page" information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. -- Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). Thus, "front page" information is specifically made public and must be released.

Generally, a governmental body claiming an exception under Government Code section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the court delineated the law enforcement interests that are present in active cases. Open Records Decision No. 216 (1978). Thus, information may be withheld under section 552.108(a)(1) on a showing that the information is related to an ongoing investigation or prosecution. If the subject cases are pending, information not otherwise made public, may be withheld under section 552.108(a)(1).

Section 552.108(a)(2) excepts information in cases that have concluded with a result other than conviction or differed adjudication. Report numbers 98-001637 and 98-17208 include notations that these cases were concluded without prosecution. Other than the "front page" information of these reports, you may withhold this information under section 552.108(a)(2). You indicate that all of the subject cases "have not resulted in conviction or deferred adjudication." However, you do not indicate which of these cases are pending or have reached a final disposition. We conclude that you have not demonstrated that the subject information in report numbers 98-017214, 99-008420, 98-003869, 99-009055 or 99-032668 is excepted under section 552.108(a)(2) of the Government Code.

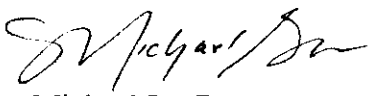
Section 552.108(b)(1) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . ." This section excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). Whether disclosure of particular records will interfere with crime prevention must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981). As you do not explain how release of the responsive information would interfere with law enforcement, we conclude that you have not demonstrated that section 552.108(b)(1) excepts this information from disclosure.

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. However, only information concerning the "most intimate aspects of human affairs" are within the scope of constitutional privacy. *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)). The constitutional right to privacy protects two interests: the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court, and the interest in avoiding disclosure of personal matters 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)). We are of the opinion that the identities of abortion clinic patients are made confidential by the constitutional right of privacy. We have marked this type of information in the submitted documents. The identities of abortion clinic patients must be withheld under section 552.101.

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.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 129696

Encl. Submitted documents

cc: Ms. Dorothy Boyett
5226 73rd Street
Lubbock, Texas 79424
(w/o enclosures)