



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 28, 2003

Mr. Joe Hunt
Sheriff
Tom Green County
222 West Harris
San Angelo, Texas 76903

OR2003-2815

Dear Mr. Hunt:

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# 180354.

The Tom Green County Sheriff's Department (the "Department") received a request for information pertaining to criminal charges filed against the requestor and an internal affairs investigation of a named officer. You assert the requested information is excepted from disclosure under sections 552.102 and 552.108 of the Government Code. We have reviewed the information you submitted and we have considered the exceptions you claim.

Initially, section 552.022 of the Government Code governs some of the submitted information. Section 552.022 provides, in relevant part, as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, section 552.022(a)(1) makes the information concerning the completed internal affairs investigation of the named officer expressly public. Therefore, the Department may withhold the information only to the extent it is made confidential under other law or is otherwise protected by section 552.108 of the Government Code.

Section 552.102 of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), cert. denied, 430 U.S. 931 (1977).

For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation*. The Texas Supreme Court stated in *Industrial Foundation* that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Based on our review of the submitted information, we believe the documents do not contain such highly intimate or embarrassing facts as to warrant protection under common-law privacy. Furthermore, the public has a legitimate interest in the information. See Open Records Decision Nos. 405 at 2-3 (1983) (public has interest in manner in which public employee performs his job), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom is not protected under former section 552.101 or 552.102), 208 at 2 (1978) (information relating to complaint against public employee and disposition of the complaint is not protected under either the constitutional or common-law right of privacy); see also Open Records Decision No. 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance and the circumstances of his resignation or termination). Accordingly, the Department may not withhold any of the submitted information based on common-law privacy or section 552.102 of the Government Code.

Section 552.108 states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body

that raises section 552.108 must reasonably explain how and why section 552.108 applies to the information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You inform us you have submitted the information concerning the criminal investigation to the appropriate prosecutorial agencies. Further, you state the criminal case "is currently being considered by those prosecutorial agencies." Therefore, with respect to the submitted information labeled "Criminal Investigation Case # 13607," we believe the release of this information "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Regarding the set of documents labeled "Internal Affairs Investigation Case # G0231," you tell us "[t]he information requested . . . has been completed." Thus, we conclude that the Department has not adequately demonstrated that release of the information pertaining to the internal investigation would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1); Open Records Decision No. 434 at 3 (law enforcement agency must explain how release of particular records or parts thereof will interfere with law enforcement or prosecution). Therefore, we conclude the Department may not withhold the information that concerns the internal affairs investigation under section 552.108(a)(1) of the Government Code. Moreover, the Department has not shown the applicability of any other subsection of section 552.108. Thus, the Department may not withhold the internal affairs investigation under section 552.108 of the Government Code.

Section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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, with the exception of the basic front page offense and arrest information, the Department may withhold the submitted information that pertains to the criminal investigation based on section 552.108 of the Government Code.

In summary, the Department must release the submitted information that concerns the internal affairs investigation as section 552.022(a)(1) makes it expressly public. With the exception of basic information, the Department may withhold the information pertaining to the criminal investigation under section 552.108 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.*

§ 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 180354

Enc: Submitted documents

c: Mr. James Thomas Jones, III
P.O. Box 104
San Angelo, Texas 76902
(w/o enclosures)