



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 6, 2005

Sheriff Larry Lynch  
McLennan County  
219 N. 6<sup>th</sup> Street  
Waco, Texas 76701

OR2005-05944

Dear Sheriff Lynch:

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# 227566.

The McLennan County Sheriff's Department (the "sheriff") received a request for all records pertaining to a specific incident in which the requestor was taken into custody by the sheriff's office. You state that you have released most of the information to the requestor, but you claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses the doctrine of common-law privacy.<sup>1</sup> This office has determined that information may be withheld from public disclosure under section 552.101 in conjunction with common-law privacy upon a showing of certain "special circumstances." See Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely

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<sup>1</sup>Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977).

cause someone to face “an imminent threat of physical danger.” *Id.* at 6. Such “special circumstances” do not include “a generalized and speculative fear of harassment or retribution.” *Id.*

The sheriff states that “given the Requestor’s history of unusual and intimidating conduct, and history of carrying weapons, it would be imprudent to disclose the name of the complaining witness.” Upon review of your arguments and the submitted information, we determine you have demonstrated the existence of special circumstances that warrants the withholding of the informant’s identity. Therefore, you may withhold the information that we have marked under section 552.101 in conjunction with common-law privacy.<sup>2</sup>

Additionally, we note that the doctrine of common-law privacy is applicable to other portions of the submitted information. The types 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. In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: an individual’s criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (citing *United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); 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 identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). The submitted report contains information that is generally protected by common-law privacy. However, we note that the requestor has a special right of access to information concerning himself under section 552.023 of the Government Code, and such information may not be withheld from him under section 552.101 in conjunction with common-law privacy.<sup>3</sup>

In summary, the sheriff must withhold the informant information that we have marked under section 552.101 in conjunction with common-law privacy. If the sheriff receives a request

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<sup>2</sup>As we are able to make this determination, we need not consider your argument under section 552.101 in conjunction with the informer’s privilege.

<sup>3</sup>*See* Gov’t Code § 552.023(a) (person or person’s authorized representative has special right of access beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself).

for this information from someone other than the requestor or the requestor's representative, it must seek another ruling from this office.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,

A handwritten signature in black ink, appearing to read 'Elizabeth A. Stephens', written in a cursive style.

Elizabeth A. Stephens  
Assistant Attorney General  
Open Records Division

EAS/krl

Ref: ID#227566

Enc. Submitted documents

c: Mr. Ali- Andrew-X98  
(AKA Robert L. Arnold)  
2215 Columbus Avenue  
Waco, TX 76701  
(w/o enclosures)