



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 15, 2005

Mr. James F. Booher  
Assistant Criminal District Attorney  
Hays County  
110 East Martin Luther King  
San Marcos, Texas 78666

OR2005-07344

Dear Mr. Booher:

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# 230422.

The Hays County Sheriff's Office (the "sheriff") received a request for information related to a named individual. You claim 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 reviewed the submitted information.

First, we note that the submitted information in Exhibit B includes arrest warrants and supporting affidavits. Article 15.26 of the Code of Criminal Procedure states "[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information." Crim. Proc. Code art. 15.26. Therefore, the sheriff must release the submitted arrest warrants and supporting affidavits to the requestor.

You assert that the remaining submitted information in Exhibit B is excepted from public disclosure under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure "[i]nformation 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." Generally, a governmental body claiming section 552.108 must reasonably explain 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(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the remaining records in Exhibit B relate to a pending criminal investigation. Based upon this representation, we conclude that the release of the

information at issue would interfere with the detection, investigation, or prosecution of crime. See *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) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d 177. Thus, with the exception of the basic front page offense and arrest information, the department may withhold the information at issue from disclosure based on section 552.108(a)(1).

In this instance, however, some of the basic information is confidential pursuant to section 552.101 and common law privacy.<sup>1</sup> Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). 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. This office has since determined that other types of information also are private under section 552.101. See, e.g., Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has held to be private), 600 (1992) (personal financial information not relating to a financial transaction between an individual and a governmental body), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). Thus, identifying information of the victim is confidential under common law privacy and must be withheld pursuant to section 552.101. The remaining basic information must be released to the requestor.<sup>2</sup>

This office has found that an individual's personal financial information not relating to a financial transaction between the individual and a governmental body is excepted from required public disclosure under common law privacy as encompassed by section 552.101 of the Government Code. See Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, the fact that an employee participates in a group insurance plan funded by a governmental employer and the amount of any payroll deduction is not

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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" and encompasses common law privacy.

<sup>2</sup>Generally, basic information held to be public in *Houston Chronicle*, 536 S.W.2d 559, is not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

information that is excepted from disclosure. Open Records Decision No. 600 at 9 (1992). On the other hand, information relating to an employee's choice of insurance carrier and his election of optional coverages is confidential under the right of privacy. *Id.* at 10-11. We find no indication that the financial information at issue relates to a transaction between the named individual and a governmental body. We have accordingly marked the financial information that must be withheld under section 552.101 in conjunction with common law privacy.

Section 552.101 also encompasses information protected by other statutes. The submitted information contains a Report of Separation of License Holder (F-5) which is made confidential by section 1701.454 of the Occupations Code. Section 1701.454 provides in relevant part:

(a) A report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552 of the Government Code.

Occ. Code § 1701.454. The department must withhold the F-5s of the named individual pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, personal cellular telephone number, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175.<sup>3</sup> Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. Therefore, to the extent the information we have marked pertains to the home address, home telephone number, personal cellular telephone number, social security number, or family member information of a peace officer, this information must be withheld under section 552.117(a)(2). We note that an individual's personal post office box number is not a "home address" and therefore may not be withheld under section 552.117. *See Gov't Code* § 552.117; Open Records Decision No. 622 at 4 (1994) ("The legislative history of section 552.117(1)(A) makes clear that its purpose is to protect public employees from being harassed *at home*. *See House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985).*" (Emphasis added.)); *see also* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality).

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

To the extent that the individuals whose information is at issue are not currently licensed peace officers, but are current or former employees of the sheriff, section 552.117(a)(1) may apply. Section 552.117(a)(1) excepts from disclosure the home address, home telephone number, personal cellular phone number, social security numbers, and family member information of current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the sheriff may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the employees timely elected to keep their personal information confidential, the sheriff must withhold the information we have marked under section 552.117(a)(1). The sheriff may not withhold this information under section 552.117(a)(1) if the employees did not make timely elections to keep the information confidential.

Some of the submitted information may also be excepted under section 552.1175 of the Government Code. This exception provides in relevant part:

(a) This section applies only to:

...

(2) county jailers as defined by Section 1701.001, Occupations Code[.]

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)-(b). Thus, pursuant to section 552.1175(a), the sheriff must withhold the information we have marked under section 552.117 if it relates to a commissioned county jailer who elects to restrict access to the information in accordance with section 552.1175(b).

Section 552.130 excepts from disclosure certain motor vehicle information. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

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

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

Gov't Code § 552.130. Therefore, the sheriff must withhold from disclosure the Texas drivers' license numbers under section 552.130.

The submitted information contains an insurance policy number. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. The sheriff must, therefore, withhold the marked insurance policy number under section 552.136.

Regardless of whether section 552.117 or 552.1175 applies, section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.<sup>4</sup> Therefore, the sheriff must withhold the social security numbers in the submitted records under section 552.147.<sup>5</sup>

Finally, we note that some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the sheriff must release the submitted arrest warrants and supporting affidavits to the requestor. With the exception of the basic front page offense and arrest information,

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<sup>4</sup>Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

<sup>5</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

the sheriff may withhold the remaining information in Exhibit B at issue from disclosure based on section 552.108(a)(1); however, identifying information of the victim is confidential under common law privacy and must be withheld pursuant to section 552.101. We have marked personal financial information that must be withheld under section 552.101 in conjunction with common law privacy. The F-5 forms must be withheld under section 552.101 in conjunction with section 1701.454 of the Occupations Code. To the extent the information we have marked pertains to the home address, home telephone number, personal cellular telephone number, social security number, or family member information of a peace officer, this information must be withheld under section 552.117(a)(2). To the extent this information pertains to the home address, home telephone number, personal cellular telephone number, social security number, or family member information of any current or former employees of the sheriff who timely elected confidentiality for the information under section 552.024, this information must be withheld under section 552.117(a)(1). The sheriff must withhold this information under section 552.1175 if it relates to a commissioned county jailer who elects to restrict access to the information in accordance with section 552.1175(b). The sheriff must withhold the information marked under sections 552.130, 552.136, and 552.147. The remaining submitted information must be released to the requestor; however, in releasing information that is protected by copyright, the sheriff must comply with copyright law.

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).

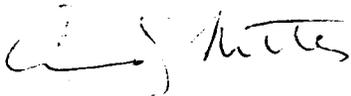
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/krl

Ref: ID# 230422

Enc. Submitted documents

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