



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 20, 2006

Mr. David Kemp  
First Assistant County Attorney  
Potter County Attorney's Office  
500 South Fillmore Street, Room 303  
Amarillo, Texas 79101

OR2006-00683

Dear Mr. Kemp:

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# 240463.

The Potter County Sheriff's Office (the "sheriff") received a request for any and all records, including audio and visual recordings, involving two named individuals, from January 1, 2004 to present. You state that you have no audio or visual information responsive to the request. We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). You state you have released some information to the requestor, but claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We also understand you to raise sections 552.130 and 552.147 of the Government Code. We have considered the exceptions 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." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy. Information is protected from disclosure by the common-law right to privacy when (1) it is highly intimate or 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. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See U. S. Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor seeks access to all records or documents involving two named individuals for a specified time period. Thus, the request requires the sheriff to compile information relating to these two individuals. Based on the reasoning set out in *Reporters Committee*, we conclude that such compilations implicate the specified individuals' right to privacy. Accordingly, we conclude that to the extent the sheriff maintains responsive information that reveals the specified individuals were criminal suspects, arrestees, or defendants, the sheriff must withhold such information from disclosure pursuant to section 552.101 of the Government Code in conjunction with common-law privacy as set out in *Reporters Committee*.

The sheriff has submitted information in which neither of the named individuals is listed as a criminal suspect, arrestee, or defendant. However, a portion of this information is subject to section 261.201 of the Family Code. Section 552.101 also encompasses information made confidential by other statutes, including section 261.201 of the Family Code. Section 261.201 provides in pertinent part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code §261.201(a). The submitted police report marked Exhibit 3 consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. Thus, we find that Exhibit 3 is within the scope of section 261.201 of the Family Code. You have not indicated that the sheriff has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the information at issue is confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute)*. Accordingly, the sheriff must withhold Exhibit 3 from disclosure in its entirety under section 552.101 of the Government Code as information made confidential by law.

Next, we address your claim under section 552.108 of the Government Code for the information in the submitted police reports marked Exhibits 2-A and 2-B. Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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 [.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication. You inform us that Exhibits 2-A and 2-B pertain to a criminal investigations that did not result in a conviction or deferred adjudication. Based on your representations and our review, we agree that section 552.108(a)(2) is applicable to this information.

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. See Gov’t Code § 552.108(c); *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). We believe such basic information refers to the information held to be public in *Houston Chronicle*, including a detailed description of the offense. See 531 S.W.2d at 186-87. Thus, the sheriff must release the types of information that are considered to be front page information, even if this information is not actually located on the front page. See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). With the exception of the basic information, the sheriff may withhold Exhibits 2-A and 2-B pursuant to section 552.108(a)(2). We note that the sheriff has the discretion to release all or part of this information that is not otherwise confidential by law. See Gov’t Code § 552.007.

In summary, to the extent that the sheriff maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, such information must be withheld under section 552.101 of the Government Code in conjunction with the common-law privacy concerns expressed in *Reporters Committee*. The sheriff must withhold Exhibit 3 from disclosure in its entirety under section 552.101 of the Government Code as information made confidential by law under section 261.201 of the Family Code. With the exception of the basic information, the sheriff may withhold Exhibits 2-A and 2-B pursuant to section 552.108(a)(2) of the Government Code.<sup>1</sup>

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

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments.

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); *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 Office of the Attorney General 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. 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,



Michael A. Lehmann  
Assistant Attorney General  
Open Records Division

MAL/sdk

Ref: ID# 240463

Enc. Submitted documents

c: Mr. Randall L. Sherrod  
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(w/o enclosures)