



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 13, 2006

Mr. Robert F. Vititow
County Attorney
Rains County
P.O. Box 1075
Emory, Texas 75440

OR2006-13426

Dear Mr. Vititow:

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# 264498.

The Rains County Sheriff's Office (the "sheriff") received a request for all offense reports and all arrest reports created between January 1, 2005 and August 28, 2006. You claim that the submitted representative sample of information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111, 552.117, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.

Initially, we must address the sheriff's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1)(D).

You state and we acknowledge that the request at issue calls for a voluminous amount of information. Further, you state that fulfilling the request would create an administrative hardship for your staff. We note that if a large amount of information is requested, a governmental body may ask the requestor to clarify or narrow the request. *See* Gov't Code

§ 552.222(b); Open Records Decision No. 663 at 2-5 (1999). However, the fact that it may be burdensome to provide the information at issue does not relieve a governmental body of its responsibility to comply with the Act. *Indust. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976) (cost or difficulty in complying with predecessor of Act does not determine availability of information); Open Records Decision No. 497 (1988). In requesting a ruling, the governmental body may submit to this office a representative sample of information rather than submitting all requested records. In so doing, it is the governmental body's burden to assure that the sample of information is representative of the responsive information as a whole. Thus, for each exception that is claimed, the governmental body must submit a record or document that the claimed exception is applicable to. In this instance you have stated that portions of the responsive information are excepted under sections 552.107, 552.108(a)(1), 552.111, 552.117 and 552.137. Thus, the sample that you submitted should have contained examples of records to which each of those exceptions applied. However, you have failed to submit examples of these exceptions. Therefore, we find that with respect to your arguments under sections 552.107, 552.108(a)(1), 552.111, 552.117 and 552.137, you have failed to meet the procedural requirements of the Act.

Sections 552.107, 552.108(a)(1), and 552.111 are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions and governmental body may waive sections 552.107 and 552.111), 177 (1977) (statutory predecessor to section 552.108 subject to waiver), 470 (1987) (statutory predecessor to section 552.111 is discretionary exception). In failing to comply with section 552.301, the sheriff has waived its claim under sections 552.107, 552.108(a)(1), and 552.111; therefore, the sheriff may not withhold any of the requested information under these sections.

We note that sections 552.117 and 552.137 of the Government Code, common-law privacy and section 58.007 of the Family Code cannot be waived by a governmental body's failure to comply with section 552.301. However, because you failed to submit information that implicates these exceptions and laws, we have no basis for concluding that the requested information must be excepted under them. Therefore, we have no choice but to find that the sheriff may not withhold the requested information under sections 552.117 and 552.137, common-law privacy or section 58.007 of the Family Code.

Next we address the sheriff's arguments under section 552.103. The sheriff states that report numbers 2006000145, 2006000544, 2006000151, 2006013767, 2006000381, 2006013939 are a sample of reports that are excepted from disclosure under section 552.103 of the Government Code. Your brief states that the sheriff has forwarded numerous arrest and offense reports to the Rains County Attorney's Office (the "county") for further investigation. You further state that the county objects to the release of the forwarded reports. We note that arrest or offense reports which are provided to the county by the sheriff

are considered completed reports subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) states that a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public under section 552.022 and may not be withheld except as provided by section 552.108 or confidential under other law. *See Gov't Code § 552.022(a)(1)*. Although you argue that this information is excepted from disclosure under section 552.103 of the Government Code, this exception is discretionary and, as such, is not other law for purposes of section 552.022. *See Dallas Area Rapid Transit* at 475-76 (governmental body may waive section 552.103); *Open Records Decision Nos. 665* at 2 n.5 (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to section 552.103 subject to waiver). You have not identified the particular arrest or offense reports that have been forwarded to the county by the sheriff. Accordingly, we must rule conditionally. To the extent that any of the responsive reports were provided by the sheriff to the county, those reports may not be withheld under section 552.103.

We now address section 552.103 to the extent that the sample reports are not subject to section 552.022(a)(1). Section 552.103 of the Government Code provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political 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.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The sheriff has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); *Open Records Decision No. 551* at 4 (1990). The sheriff must meet both prongs of this test for information to be excepted under 552.103(a).

You state that the responsive information relates to criminal prosecutions that were pending when the sheriff received this request for information. The sheriff is not a party to a criminal prosecution. As you acknowledge the county as opposed to the sheriff is a party to some of the pending criminal litigation. *See Gov't Code § 552.103(a)*; *Open Records Decision*

No. 575 at 2 (1990) (stating that predecessor to section 552.103 only applies when governmental body is party to litigation). Accordingly, the sheriff may not withhold the reports at issue under section 552.103 of the Government Code. Because the sheriff is not a party to this litigation, we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103.

The county represents that it is a party to pending and anticipated litigation involving appeals and bail bond forfeiture suits, and objects to the release of the responsive reports to which it is a party. However, the submitted sample of information does not include an example of a report in which the county is a party in an appeal or bail forfeiture case. Further, The county does not argue, and the submitted sample does not reflect that the county is a party to any of the litigation which you state is pending in the submitted sample. Thus, you have failed to establish that any of the submitted sample of information may be withheld under section 552.103.

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. 552.101 encompasses information made confidential by section 262.201 of the Family Code. Section 261.201(a) provides as follows:

(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). You state that report number 2006000145 and arrest report number 2006013761 are excepted from disclosure under section 261.201 as it involves an incident in which a person was charged with abandonment/endangerment of a child. Upon review of your arguments and report number 2006000145, we find that the report involves the execution of a felony warrant. You do not explain how this report is a working paper used or developed in an investigation under chapter 261. *See also* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Thus report number 2006000145 may not be withheld under section 552.101 in conjunction with section 261.201. However, we find that you have demonstrated that arrest report 2006013761 pertains to an investigation of alleged or suspected child abuse or neglect as those terms are

defined by the Family Code. *See* Fam. Code. §§ 261.001(1), (4) (defining “abuse” and “neglect” for the purposes of chapter 261 of the Family Code). We therefore determine that section 261.201 is applicable to report 2006013761, and thus, the sheriff must withhold the report in its entirety under section 552.101 in conjunction with section 261.201.

Section 552.108(a)(2) excepts from public 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 explain how report numbers 2005012928, 2005000055, 2005012761, 2005012825, 2006000381, 2005000741, and 200500741 pertain to cases which have concluded in a result other than conviction or deferred adjudication. Based on your representations and our review of the reports, we find that you have established that section 552.108(a)(2) is applicable to these report numbers.

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 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). We note that basic information does not include motor vehicle record information. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, you may withhold report numbers 2005012928, 2005000055, 2005012761, 2005012825, 2006000381, 2005000741, and 200500741 under section 552.108(a)(2).

Next you state that the Texas motor vehicle record information contained in the responsive information is excepted from public disclosure under section 552.130. 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;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a)(1)-(3). The submitted information contains Texas motor vehicle record information. Accordingly, you must withhold the Texas motor vehicle record information that we have marked under section 552.130 of the Government Code. We note that section 552.130 does not except from disclosure motor vehicle record information from other states. Therefore, you must release any motor vehicle record information from other states.

Finally, you state that the responsive information contains social security numbers that must be withheld under section 552.147 of the Government Code. Section 552.147 of the provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov't Code § 552.147. We note that, by its terms, section 552.147 only excepts from disclosure the social security numbers of living individuals. Therefore, a deceased individual's social security number may not be withheld under section 552.147. The sheriff must withhold the social security numbers we have marked under section 552.147.¹

In summary, you must withhold report number 2006013761 under section 552.101 in conjunction with section 261.201 of the Family Code. With the exception of basic information, you may withhold report numbers 2005012928, 2005000055, 2005012761, 2005012825, 2006000381, 2005000741, and 200500741 under section 552.108(a)(2). You must withhold the Texas motor vehicle record information and social security numbers marked under sections 552.130 and 552.147 of the Government Code. You must release the remaining information.

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).

¹ 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.

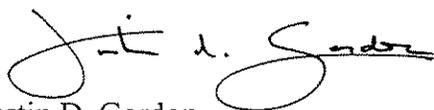
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/sdk

Ref: ID# 264498

Enc. Submitted documents

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(w/o enclosures)