



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 20, 2007

Ms. Sandy Dudley
Records Coordinator
City of Cleburne
P.O. Box 677
Cleburne, Texas 76033-0677

OR2007-02033

Dear Ms. Dudley:

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#272488.

The Cleburne Police Department (the "department") received a request for calls for service and police reports relating to a specified address during a specified time period. You state that you have released some of the requested information to the requestor. However, you claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that the submitted information contained in Exhibit 17 is excepted from disclosure under section 552.101. 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. Section 552.101 encompasses information made confidential by other statutes. Section 58.007 of the Family Code provides as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). In this instance, you have not explained how the information in Exhibit 17 falls within the statutory definition of delinquent conduct or conduct indicating a need for supervision. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). Therefore, the department cannot withhold the information in Exhibit 17 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

You claim that the marked information contained in Exhibits 6, 11, and 12 is excepted from disclosure under section 552.108(a)(2). Section 552.108 of the Government Code provides in relevant part:

- (a) 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:

...

- (2) 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). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based upon your representations and our review, we conclude that the department can withhold the marked information in Exhibits 6, 11, and 12 under section 552.108(a)(2).

You claim that the marked information contained in Exhibits 14, 15, and 16 is excepted from disclosure under section 552.108(a)(1). Section 552.108 of the Government Code excepts from disclosure: (a) Information 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[.] Gov't Code § 552.108(a). In this instance, you state that releasing the marked information

in Exhibits 14, 15, and 16 would interfere with a pending investigation. Based upon your representation and our review, we agree that section 108(a)(1) is applicable to Exhibits 14, 15, and 16.

We note that section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Such 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). Basic information includes the identity and description of the complainant. However, information tending to identify a sexual assault victim is protected by common-law privacy and must be withheld pursuant to section 552.101 of the Government Code.¹ See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976); Open Records Decision Nos. 393 (1983), 339 (1982). The information in Exhibits 14, 15, and 16 pertains to a sexual assault. Therefore, the department must withhold the complainant's identifying information that is contained in the basic information under section 552.101 in conjunction with common-law privacy.

You also claim that a portion of Exhibit 27 is excepted from disclosure under section 552.101 in conjunction with common-law privacy. 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.*, 540 S.W.2d 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. Upon review, we conclude that you have failed to explain how any of the information contained in Exhibit 27 is highly intimate or embarrassing for the purposes of common-law privacy. Therefore, no portion of Exhibit 27 can be withheld under section 552.101.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state."² Gov't Code § 552.130. Therefore, the department must withhold the Texas driver's license and motor vehicle information contained in Exhibits 10, 23, and 25 under section 552.130.

¹Section 552.101 of the Government Code encompasses the doctrine of common-law privacy. Gov't Code § 552.101.

²Unlike other exceptions to disclosure, this office will raise sections 552.130 and 552.147 on behalf of a governmental body, as these exceptions are mandatory and may not be waived. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

We further note that some of the remaining information is excepted from disclosure under section 552.147. 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. Gov’t Code § 552.147. Therefore, the department must withhold the social security number contained in Exhibit 25 under section 552.147.³

In summary, the department may withhold the information it has marked in Exhibits 6, 11, and 12 under section 552.108(a)(2) of the Government Code. Except for basic information, the department may withhold the information in Exhibits 14, 15, and 16 under section 552.108(a)(1). Pursuant to section 552.101 in conjunction with common-law privacy, the department must withhold the complainant’s identifying information contained in Exhibits 14, 15, and 16. The department must withhold the Texas driver’s license, motor vehicle information, and social security numbers contained in Exhibits 10, 23, and 25 under sections 552.130 and 552.147, respectively. The remaining information must be released.

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).

³We 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 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,

A handwritten signature in black ink, appearing to read "Lori A. Cobos". The signature is fluid and cursive, with a large initial "L" and "C".

Lori A. Cobos
Assistant Attorney General
Open Records Division

LC/eb

Ref: ID# 272488

Enc. Submitted documents

c: Ms. April Wagner
400 Phillips Street
Cleburne, Texas 76031
(w/o enclosures)