



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 7, 2007

Mr. Paul J. Stewart  
Assistant County Attorney  
Fort Bend County  
301 Jackson Street, Suite 728  
Richmond, Texas 77469

OR2007-02610

Dear Mr. Stewart:

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# 272817.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for thirteen specified police reports. You state that you have released report numbers 03-10563, 04-7049, and 04-12031. You also state that you will release the front page information from report numbers 02-24786, 03-5836, 03-18842, 03-23812, and 03-24305.<sup>1</sup> You claim that the remaining information is excepted from disclosure under sections 552.101, 552.108, and 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201(a) provides as follows:

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<sup>1</sup>We assume that the "front page" information you have released is the basic information referred to under section 552.108(c) of the Government Code. Gov't Code § 552.108(c) (requiring the release of basic information about an arrested person, and arrest, or a crime); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).

(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 [the Family 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 [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state that the submitted report was developed and used in an investigation of alleged or suspected child abuse. *See* Fam. Code. §§ 261.001(1) (defining “abuse” for the purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). You do not indicate 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 submitted information 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 report number 04-10746 from disclosure under section 552.101 of the Government Code as information made confidential by law.

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 report numbers 02-24786, 03-5836, 03-18842, 03-23812, 03-24305, 04-1230, 04-6228, 04-10803, 04-16713 relate to pending criminal investigations or prosecutions. We note however, that report numbers 03-18842, 03-23812, and 03-24305 relate to burglary of a motor vehicle investigations. The events that gave rise to these investigations occurred on September 19, 2003, November 30, 2003, and December 8, 2003. The longest possible statute of limitations for the offense described in these reports is two years. *See* Pen. Code § 30.04(d) (burglary of a motor vehicle is a Class A misdemeanor); Crim. Proc. Code art. 12.01(6) (providing an indictment or information on any misdemeanor may be presented within two years from the date of the commission of the offense, and not afterward). More than two years has elapsed since the events giving rise to the investigations in reports numbers 03-18842, 03-23812, and 03-24305. You have not

informed this office that any criminal charges were filed within the limitations period in this case. Furthermore, you have not otherwise explained how release of these police reports would interfere with the detection, investigation, or prosecution of crime. Thus, report numbers 03-18842, 03-23812, and 03-24305 may not be withheld under section 552.108(a)(1).

The statute of limitations has not run on the remaining reports, and based upon your representations, we conclude that the release of report numbers 02-24786, 03-5836, 04-1230, 04-6228, 04-10803, and 04-16713 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 basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d 177; Open Records Decision No. 127 (1976). However, information tending to identify the sexual assault victim is private and must be withheld. Gov't Code § 552.101 (excepts information made confidential by judicial decision and encompasses common law privacy); *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668; Open Records Decision Nos. 393 (1983), 339 (1982). Generally, only the complainant's identifying information must be withheld under common-law privacy. However if the requestor knows the identity of the alleged victim, then withholding only the identifying information from the requestor would not preserve the victim's common-law right to privacy.

In this instance, only report numbers 04-1230, 04-6228, and 04-16713 relate to sexual assault investigations. We have marked the type of information that identifies the victim in the basic information, specifically the name of the victim and the victim's apartment and telephone numbers, that must not be released as basic information. The remaining basic information must be released to the requestor. We also note that it appears that the requestor in this instance may be the authorized representative of the victim in report number 04-16713. Accordingly, if the sheriff determines that the requestor is the authorized representative of the victim in this report, then the sheriff may not withhold the victim's identifying information. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's authorized representative, on grounds that information is considered confidential by privacy principles). However, if the requestor is not the authorized representative of the victim, then because the requestor knows the identity of the victim in report number 04-16713, the report must be withheld in its entirety. You must release all basic information with respect to report numbers 02-24786, 03-5836, and 04-10803.<sup>2</sup>

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<sup>2</sup>We note that you state you have already released the basic information related to report numbers 02-24786 and 03-5836.

Section 552.101 also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is generally protected by common-law privacy. See Open Records Decision No. 545 (1990). The marked lien information constitutes financial information records. Further, in this instance we find that there is not a legitimate public interest in the release of this information. Accordingly, you must withhold the marked lien information in report numbers 03-23812 and 03-24305 under section 552.101 in conjunction with common-law privacy.

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides which provides in part:

(a) Information is excepted from the requirements 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(a). The sheriff must withhold the Texas motor vehicle record information that is marked in report numbers 03-18842, 03-23812, 03-24305 under section 552.130 of the Government Code.

You also assert that some of the remaining information contains social security numbers. 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 sheriff must withhold the social security numbers marked in report numbers 03-18842, 03-23812, 03-24305 under section 552.147 of the Government Code.

In summary, you must withhold report number 04-10746 under section 552.101 in conjunction with section 261.201 of the Family Code. You must withhold the lien information in report numbers 03-23812 and 03-24305 under section 552.101 in conjunction with common-law privacy. With the exception of basic information which excludes the identifying information of the victims in report numbers 04-1230 and 04-6228, you may withhold report numbers 02-24786, 03-5836, 04-1230, 04-6228, 04-10803, and 04-16713 under section 552.108. However, if the requestor is not the authorized representative of the victim in report number 04-16713, then that report must be withheld in its entirety under section 552.101 in conjunction with common-law privacy. You must withhold the Texas

motor vehicle record information and social security numbers in report numbers 03-18842, 03-23812 and 03-24305 under sections 552.130 and 552.147 of the Government Code. 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).

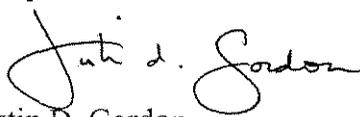
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 that reads "Justin D. Gordon". The signature is written in a cursive style with a large initial "J" and "G".

Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/sdk

Ref: ID# 272817

Enc. Submitted documents

c: Mr. Joel S. Shields  
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(w/o enclosures)