



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 3, 2007

Ms. Katie Lentz
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

Ms. Jana K. McCown
First Assistant District Attorney
Williamson County
405 Martin Luther King Street, No. 1
Georgetown, Texas 78626

OR2007-08476

Dear Ms. Lentz and Ms. McCown:

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# 282648.

The Williamson County Sheriff's Office (the "sheriff") and the Williamson County District Attorney (the "district attorney") received two requests from the same requestor for several categories of information regarding the requestor and the requestor's ex-wife. The sheriff and district attorney claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, and 552.147 of the Government Code. We have considered these exceptions and reviewed the submitted information.

Initially, we note that some of the submitted information is subject to section 552.022 of the Government Code, which provides in part that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

Gov't Code § 552.022(a)(1). In this instance, portions of the submitted information are completed investigations made by and for the district attorney and the sheriff. This information must be released under section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. The sheriff and the district attorney seek to withhold this information under section 552.103. We note, however, that this section is a discretionary exception to public disclosure that protects the governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 473 (1987) (section 552.103 may be waived). As such, section 552.103 does not qualify as other law that makes information confidential for the purposes of section 552.022. Therefore, the district attorney and the sheriff may not withhold any portion of this information under section 552.103. However, the district attorney and the sheriff also raise sections 552.101 and 552.108 for this information; therefore, we will consider these arguments.

Next, we address the sheriff's argument that the information submitted as Exhibit C is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Gov't Code § 552.101. Section 261.201(a) of the Family Code 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). Because some of the information in Exhibit C consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code, the information we have marked falls within the scope of section 261.201(a). As the sheriff does not indicate that the sheriff has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, we conclude that the sheriff must withhold the information we have

marked in Exhibit C under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute). The remaining information submitted in the sheriff's Exhibit C pertains to a child custody dispute. Upon review of the sheriff's arguments and the remaining information in Exhibit C, we find that the sheriff has failed to demonstrate how any of the remaining information in Exhibit C was used or developed in an investigation of abuse or neglect under chapter 261. We therefore determine that section 261.201 is not applicable to the remaining information in Exhibit C. Accordingly, the sheriff may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

The sheriff also asserts that the information it has marked in Exhibits E and F is excepted from disclosure under common-law privacy. Section 552.101 of the Government Code also encompasses common-law privacy. Gov't Code § 552.101. 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). 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. Information may also be withheld under section 552.101 in conjunction with common-law privacy upon a showing of "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.*

In this instance, the sheriff informs us that the release of the information it has marked in Exhibits E and F, which identifies undercover officers, would likely cause the officers to face imminent threat of physical danger. Based on the sheriff's representations and our review, we agree that the sheriff must withhold the information it has marked in Exhibits E and F under section 552.101 of the Government Code in conjunction with the "special circumstances" aspect of common-law privacy.

We now address the sheriff's and the district attorney's arguments under section 552.108 of the Government Code. This exception provides in part:

¹We note, however, that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, the children's parent may have the statutory right to review that file. *See* Fam. Code § 261.201(g); Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Sess. Law Serv. 611, 641.

(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:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(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;

(3) it is information relating to a threat against a peace officer collected or disseminated under Section 411.048; or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)-(b). Sections 552.108(a)(1) and 552.108(b)(1) are applicable if the release of the information would interfere with law enforcement interests. *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). Sections 552.108(a)(2) and 552.108(b)(2) are applicable only if the information at issue relates to a concluded case that did not result in a conviction or a deferred adjudication. Sections 552.108(a)(4) and 552.108(b)(3) are applicable to information that was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that reflects the mental impressions or legal reasoning of an attorney representing the state.

A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See Gov't Code § 552.301(e)(1)(A); Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). In this instance, the sheriff asserts that some of the information submitted in the sheriff's Exhibit D pertains to cases that remain open and pending. However, incident reports 1163634, 1095222, and 1079780 involve allegations of burglary and theft that occurred in 1999 and 2000. We note that the statutes of limitations for these offenses have expired. *See* Crim Proc. Code arts. 12.01(4)(A) (limitations for theft, burglary, robbery is five years from date of offense), We also note that incident report 1214078 relates to criminal trespass that occurred in 2001. The longest possible statute of limitations for this report is two years. *See* Penal Code § 30.05, Crim. Proc. Code art. 12.02 (misdemeanors subject to two year limitations period). Thus, the statute of limitations for incident report 1214078 has also run. With regard to incident reports 1163634, 1095222, 1079780, and 1214078, the sheriff has neither informed this office that any criminal charges were filed within the limitations period nor explained how release of these reports would interfere with the detection, investigation, or prosecution of offenses for which the statutes of limitations has run. Thus, the sheriff has not established the applicability of section 552.108(a)(1) to incident reports 1163634, 1095222, 1079780, and 1214078.

However, based upon the sheriff's representations and our review of incident reports 1675102, 1656094, and 1446354 in the sheriff's Exhibit D, we conclude that the release of this information 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). Accordingly, we conclude that section 552.108(a)(1) is applicable to incident reports 1675102, 1656094, and 1446354 in the sheriff's Exhibit D. The sheriff also claims that the remaining information in Exhibit C and Exhibit E pertains to criminal investigations that concluded in final results other than conviction or deferred adjudication. Upon review, we agree that section 552.108(a)(2) applies to the remaining information in the sheriff's Exhibit C, and to the sheriff's Exhibit E.

The district attorney asserts that the information it has submitted was prepared by an attorney representing the state in anticipation of or in the course of criminal litigation. The district attorney states that this information reflects the mental impressions and legal reasoning of the attorney representing the state. Additionally, the district attorney asserts that portions of its submitted information are internal records or notations of the prosecutor's office that are maintained for use in matters relating to law enforcement and prosecution and are prepared by the prosecuting attorney or his representatives for use in litigation. Having considered the district attorney's representations and reviewed the information at issue, we conclude that the district attorney may withhold the its submitted information under section 552.108(a)(4) and (b)(3) of the Government Code.

We note, however, that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the sheriff may withhold incident reports 1675102, 1656094, and 1446354 in the sheriff's Exhibit D pursuant to section 552.108(a)(1) and the remainder of Exhibits C and E pursuant to section 552.108(a)(2), and the district attorney may withhold the district attorney's submitted information under section 552.108(a)(4) and (b)(3).²

We now address the sheriff's argument under section 552.103 of the Government Code for the remainder of the sheriff's Exhibit F. Section 552.103 provides as follows:

(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.

²As we are able to resolve this under section 552.108, we do not address the sheriff's and the district attorney's other claims for exception of this information, except to note that basic information may not be withheld from public disclosure under section 552.103. *Open Records Decision No. 597 (1991)*.

Gov't Code § 552.103(a), (c). A governmental body 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 was pending or reasonably anticipated on the date the governmental body received the request for information, 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The sheriff states and provides documentation showing that, prior to these requests, a lawsuit styled *Simon v. Williamson County*, Cause No. A07CA001 LY, was filed and is currently pending in the District Court of the Western District of Texas, Austin, Texas. Based upon the sheriff's representations and our review, we conclude that litigation was pending when the sheriff received the request. We also conclude that the sheriff's Exhibit F is related to the pending litigation for the purposes of section 552.103. Therefore, the sheriff may withhold the remainder of Exhibit F under section 552.103 of the Government Code.

However, once the information at issue has been obtained by all parties to the anticipated litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any portion of Exhibit F that has either been obtained from or provided to all other parties in the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

The sheriff claims that some of the remaining information in Exhibit D is excepted from disclosure under section 552.130 of the Government Code. This section excepts from disclosure Texas motor vehicle record information. Gov't Code § 552.130. We agree that the sheriff must withhold most of the Texas motor vehicle record information it has marked under section 552.130 of the Government Code. However, pursuant to section 552.023, the requestor has a right of access to his own Texas motor vehicle record information, which we have marked in Exhibit D, and the sheriff may not withhold that information from the requestor under section 552.130. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles).

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.³ *Id.* § 552.147. Therefore the sheriff may withhold the social security numbers it has marked pursuant to section 552.147 of the Government Code.

In summary, the sheriff must withhold the information we have marked in Exhibit C pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff must also withhold the information it has marked in Exhibits E and F under section 552.101 of the Government Code in conjunction with the “special circumstances” aspect of common-law privacy. With the exception of basic information, the sheriff may withhold incident reports 1675102, 1656094, and 1446354 in the sheriff’s Exhibit D and the remaining information in Exhibits C and E, and the district attorney may withhold its submitted information pursuant to section 552.108 of the Government Code. The sheriff may withhold the remainder of Exhibit F pursuant to section 552.103 of the Government Code. With the exception of the requestor’s information, the sheriff must withhold the information it has marked in Exhibit D pursuant to section 552.130 of the Government Code. The sheriff may withhold the information it has marked pursuant to section 552.147 of the Government Code. The remaining information must be released to the requestor.⁴

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).

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 officer under the Act. The requestor has a right, however, to his own social security number. *See generally* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles).

⁴As our ruling is dispositive, we do not address the sheriff’s or district attorney’s remaining arguments against disclosure.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/mcf

Ref: ID# 282648

Enc. Submitted documents

c: Mr. Daniel Simon
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(w/o enclosures)