



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2007

Ms. Brandy Byrd Hallford
Assistant County Attorney
Williamson County Courthouse
405 MLK #7
Georgetown, Texas 78626

OR2007-15234

Dear Ms. Hallford:

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# 295210.

Williamson County (the "county") received a request for "dispatch call records from May 20, 2007" related to a specified location. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

You assert that the requested information is subject to section 552.108 of the Government Code. Section 552.108 of the Government Code provides in pertinent 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:

...

¹Although you also cite "all of the exceptions provided by, and the exceptions incorporated into, sections 552.101-552.1423 of the . . . Act" in your brief to this office, you have provided arguments only for sections 552.101 and 552.108. We address only the exceptions you have argued. *See* Gov't Code §§ 552.301, .302.

(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. We note that information held by the county is not information held by a law enforcement agency. However, this office has recognized that information that is not held by a law enforcement agency may be excepted from disclosure under section 552.108 if the information relates to a pending criminal investigation by a law enforcement agency. *See* Open Records Decision Nos. 474 (1987) (statutory predecessor to section 552.108 may be invoked by proper custodian of information relevant to an incident involving allegedly criminal conduct that is still under active investigation or prosecution), 372 (1983). Similarly, this office has determined that records from an administrative investigation of a non-law enforcement agency may be withheld under section 552.108 if the records reveal possible criminal conduct that the non-law enforcement agency intends to report or has reported to the appropriate law enforcement agency or prosecutor. Attorney General Opinion MW-575 (1982); Open Records Decision No. 493 (1988).

You provide a representation from the Williamson County Sheriff's Office informing us that the submitted information pertains to a criminal investigation that did not result in conviction or deferred adjudication. Thus, we find that the information at issue is not from an administrative investigation revealing possible criminal conduct to be forwarded to a law enforcement agency or prosecutor. *See* Attorney General Opinion MW-575 (1982). Furthermore, you inform us that the information at issue does not pertain to a pending investigation. *See* Open Records Decision No. 474 (1987). We therefore find you have not adequately demonstrated the applicability of section 552.108 to this information. Consequently, the county may not withhold the submitted information pursuant to section 552.108 of the Government Code.

You next claim that the submitted information is excepted from public 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." Gov't Code § 552.101. This section encompasses the doctrine of common law privacy. Common law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *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. In addition, this office has found that the following types of information are excepted from required public disclosure under common law

privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455(1987) (prescription drugs, illnesses, operations, and physical handicaps); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339(1982). Upon review, we find that no portion of the submitted information constitutes highly intimate or embarrassing information of no legitimate concern to the public. Thus, the submitted information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy, and must be released to the requestor.

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 cursive script, appearing to read "Cindy Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 295210

Enc. Submitted documents

c: Ms. Tessa Moll
Taylor Daily Press and The Hutto News
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(w/o enclosures)