



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 4, 2008

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

OR2008-02886

Dear Ms. Lentz:

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# 303723.

The Williamson County Sheriff's Office (the "sheriff") received a request for a specific offense report. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state that the submitted offense report was the subject of a previous ruling issued by this office. In Open Records Letter No. 2008-01739 (2008), this office determined that the sheriff must withhold the submitted report under section 552.101 of the Government Code in conjunction with the doctrine of common-law privacy. We note, however, that the privacy issues discussed in the previous ruling are not at issue here. Therefore, the facts and circumstances have changed with regard to the submitted report, and the sheriff may not rely on the ruling in Open Records Letter No. 2008-01739 in this instance. However, we will address your current arguments against the disclosure of the submitted report.

Section 552.108(a) of the Government Code 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." Gov't Code § 552.108(a)(1). 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested offense report relates to a pending criminal prosecution by the Williamson County District Attorney's Office (the "district attorney"). You state that the district attorney has requested that the information at issue not be released. Based on your representations and our review, we determine that the release of the offense report 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).

We note, however, that 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*. *See* 531 S.W.2d 177; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic front page information, the sheriff may withhold the submitted information pursuant to section 552.108(a)(1).<sup>1</sup> We note that you have the discretion to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

You argue that some of the basic information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the doctrine of common-law privacy. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of 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. 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 that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld from the public under section 552.101 in conjunction with common-law privacy. *See* Open Records Decision Nos. 393 (1983), 339 (1982). We note, however, that in this instance the submitted offense report uses a pseudonym and not the

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<sup>1</sup> As our ruling is dispositive, we need not address your remaining arguments against the disclosure of this information, except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

victim's real name. We note that use of a pseudonym by the victim sufficiently protects the victim's privacy. Upon review of the offense report, we find that none of it is identifying of the victim, and therefore none of it may be withheld under section 552.101 and common-law privacy.

You also argue that a portion of the basic information constitutes the personal information of a peace officer. Section 552.117(a)(1) of the Government Code excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Gov't Code § 552.117(a)(1). Section 552.117(a)(2) protects the same information regarding a peace officer regardless of whether the officer made an election under section 552.024 or section 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). We note that section 552.117 only applies to records that the governmental body is holding in an employment capacity. In this instance, the information you seek to withhold under section 552.117 is contained in law enforcement records. Thus, none of the personal information may be withheld under section 552.117 of the Government Code.

However, section 552.1175 of the Government Code may apply. This section provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a), (b). Thus, the sheriff must withhold the personal information you have marked under section 552.1175 in the basic information if it belongs to a currently licensed peace officer who elects to restrict access to this information in accordance with

section 552.1175(b). If no election is made, or if the individual at issue is not a currently licensed peace officer, the sheriff may not withhold this information under section 552.1175.

In summary, with the exception of basic information, the sheriff may withhold the submitted offense report pursuant to section 552.108 of the Government Code. The sheriff must withhold the personal information it has marked under section 552.1175 in the basic information, if the information belongs to a currently licensed peace officer who elects to restrict access to this information in accordance with section 552.1175(b). The remaining basic 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Lauren E. Kleine  
Assistant Attorney General  
Open Records Division

LEK/mcf

Ref: ID# 303723

Enc. Submitted documents

c: Ms. Rebecca Grote  
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(w/o enclosures)