



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 25, 2008

Ms. Michelle T. Rangel  
Assistant County Attorney  
Fort Bend County  
301 Jackson, Suite 728  
Richmond, Texas 77469

OR2008-05591

Dear Ms. Rangel:

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# 308383.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for six categories of information pertaining to two specific individuals and a specific address. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section 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). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information

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<sup>1</sup>To the extent any additional responsive information existed on the date the sheriff received this request, we assume you have released it. If you have not released any such records, you must do so at this time. See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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. 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). You seek to withhold a police report related to an out-of-state sex offender. The submitted information reflects that the individual was being required to register as a sex offender with the Texas Department of Public Safety (the "department"). We note that even though it may be intimate or embarrassing, information is not protected by common-law privacy if it is a matter of legitimate public interest. *See Indus. Found.*, 540 S.W.2d at 685; Open Records Decision No. 579 at 7 (1990). Because the department's database of registered sex offenders is available to the public, we believe that whether a particular individual is a sex offender is a matter of legitimate public interest. *See* Crim. Proc. Code art. 62.005. Therefore, upon review of the submitted information, we conclude that it does not contain information that is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, you may not withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning a criminal investigation that concluded in a result other than 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. You state that the submitted information pertains to a case that was closed because no criminal offense occurred, and therefore, the case concluded in a result other than conviction or deferred adjudication. We agree that section 552.108(a)(2) is applicable to the submitted information.

However, we note 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 Publishing Company v. City of Houston*, 531 S.W. 2d 177 (Tex. Civ. App.—Houston [14<sup>th</sup> Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.E. 2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). *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 the submitted information pursuant

to section 552.108(a)(2).<sup>2</sup> We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

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.

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

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 'Chris Schulz', with a long horizontal flourish extending to the right.

Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/jb

Ref: ID# 308383

Enc. Submitted documents

c: Mr. Tom Reed  
Special Investigative Unit  
State Farm Lloyds  
4444 Corona, Suite 140  
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(w/o enclosures)