



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 15, 2008

Ms. Vivian J. Harvey
Assistant County Attorney
Henderson County
100 East Tyler Street
Athens, Texas 75751

OR2008-06613

Dear Ms. Harvey:

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# 310751.

The Henderson County Sheriff's Department (the "sheriff") received a request for two specified offense reports concerning a named individual. You state that you have released one of the offense reports to the requestor. We understand you to claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.1325 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that the portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the doctrine of common-law privacy. Gov't Code § 552.101. 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. Upon review, we determine that the information at issue is either not highly intimate or embarrassing or is of legitimate public interest.

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 release of the information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. "Special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* After reviewing your arguments, you have failed to demonstrate special circumstances sufficient to justify withholding any of the submitted information from public disclosure. Therefore, the sheriff may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1325 of the Government Code provides as follows:

(a) In this section:

(1) "Crime victim" means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.

(2) "Victim impact statement" means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

(1) the name, social security number, address, and telephone number of a crime victim; and

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

Gov't Code § 552.1325. In this instance, you have not demonstrated that any of the submitted information either is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement. We therefore conclude that the sheriff may not withhold any of the submitted information under section 552.1325. As you raise no other exceptions against disclosure, the submitted information 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 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).

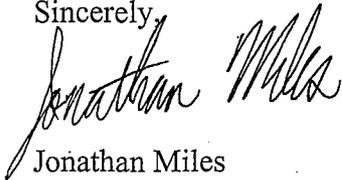
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 310751

Enc. Submitted documents

c: Ms. Fiona Ann Herriage
5909 County Road 3925
Athens, Texas 75752
(w/o enclosures)