



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 29, 2009

Ms. Raethella Jones
Assistant District Attorney
Brazoria County Courthouse
111 East Locust, Suite 408A
Angleton, Texas 77515

OR2009-05681

Dear Ms. Jones:

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# 341352.

The Brazoria County Sheriff's Department (the "department") received a request for (1) the full names, date of hire, rank, and position of all employees currently assigned to the narcotics division of the department; and (2) the same information for those employees who, during a specified time period, resigned or were terminated, reassigned, or placed on suspension or administrative leave, and the date and reason for their separation from the department. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you acknowledge, and we agree, that the department failed to comply with section 552.301 of the Government Code in seeking an open records ruling from this office. *See* Gov't Code § 552.301(b), (e). A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision

No. 319 (1982). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or that third-party interests are at stake. *See* Open Records Decision Nos. 325 at 2 (1982), 150 (1977). Although you raise section 552.108 of the Government Code, this section is a discretionary exception that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Section 552.101 of the Government Code, however, can provide a compelling reason to overcome this presumption; therefore, we will consider whether this section requires the department to withhold the requested information.

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 common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Information must 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.* We determine whether a request for information presents such "special circumstances" on a case-by-case basis. *Id.* at 7.

You state that release of the submitted information, which identifies undercover officers, would likely cause the officers to face imminent threat of physical danger and compromise their effectiveness in undercover operations. You further inform us that the safety and effectiveness of agents who have been reassigned would also be jeopardized. Based on these representations and our review, we conclude that the department must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find the remaining information does not identify the officers at issue. Therefore, it may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy and must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php,

or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

Ref: ID# 341352

Enc. Submitted documents

c: Requestor
(w/o enclosures)