



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 14, 2009

Ms. Laura Garza Jimenez  
Nueces County Attorney  
Nueces County Courthouse  
901 Leopard, Room 207  
Corpus Christi, Texas 78401-3680

OR2009-09711

Dear Ms. Jimenez:

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# 348978.

The Nueces County Sheriff (the "sheriff") received a request for surveillance video and reports related to a specified incident in the McKenzie Jail Annex, names of guards on duty during the incident, the personnel file of a named corrections officer, including employee manuals, and any incident reports regarding the named officer during a specified time period. You state you will release some of the requested information. You state you do not have information responsive to the request for surveillance video.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code 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 information protected by the doctrine of

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

common-law privacy, which 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decisions Nos. 393 (1983), 339 (1982); *see also* Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). In this instance, the request indicates the requestor knows the identity of the alleged victim listed in a portion of the submitted information. Thus, withholding only the victim's identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, to protect the privacy of the individual to whom this information relates, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

You contend the remaining information in Exhibit 1 is excepted by section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) 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 Id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information in Exhibit 1 relates to a pending criminal prosecution. Based upon this representation, we conclude section 552.108(a)(1) is applicable to the remaining information in Exhibit 1. *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). Thus, the remaining information in Exhibit 1 may be withheld under section 552.108(a)(1) of the Government Code.<sup>2</sup>

Next, you claim section 552.108(b)(1) of the Government Code for portions of Exhibit 3. Section 552.108(b)(1) of the Government Code provides:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of the information in Exhibit 1.

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(b)(1). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of section 552.108, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 at 2 (1987) (release of forms containing information regarding when and where off-duty police officers will be working would unduly interfere with law enforcement), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted).

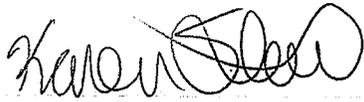
You contend the information you have marked in Exhibit 3 is excepted by section 552.108(b)(1). You state this information relates to security measures and procedures in the Nueces County Jail, and is not common knowledge. You argue release of this information would allow the public to find weaknesses in the Nueces County Jail facilities, jeopardize officer safety, and generally undermine the sheriff's efforts to effectuate the laws of this state. Further, you argue that release of a portion of Exhibit 3 would provide an advantage to inmates in planning an escape. Based on your representations and our review, we conclude the sheriff has demonstrated the release of some of the information in Exhibit 3 would interfere with law enforcement and crime prevention. Thus, the sheriff may withhold this information, which we have marked, under section 552.108(b)(1). However, we find you have not demonstrated the release of the remaining information in Exhibit 3 would interfere with law enforcement and crime prevention. Thus, the remaining information at issue in Exhibit 3 may not be withheld under section 552.108(b)(1).

In summary, the information we have marked in Exhibit 1 must be withheld pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information in Exhibit 1 may be withheld pursuant to section 552.108(a)(1) of the Government Code. The information we have marked in Exhibit 3 may be withheld pursuant to section 552.108(b)(1) of the Government Code. The remaining information 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](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,



Karen E. Stack  
Assistant Attorney General  
Open Records Division

KES/cc

Ref: ID# 348978

Enc. Submitted documents

c: Requestor  
(w/o enclosures)