



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 23, 2009

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

OR2009-16666

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# 362213.

The Williamson County Sheriff's Office (the "sheriff") received a request for any and all incident reports involving the requester. You claim some of the requested 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, we address your argument under section 552.108 of the Government Code for a portion of the submitted information. Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication [.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state case number C09-06-2065 pertains to a concluded criminal investigation that did not result in a conviction or deferred adjudication. Based on your representation, we agree that case number C09-06-2065 is subject to section 552.108(a)(2).

We note 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 Publishing 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). See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Basic information includes the identification and description of the complainant. See *Houston Chronicle*, 531 S.W.2d at 187; ORD127. Thus, except for basic information, the sheriff may withhold case number C09-06-2065 under section 552.108(a)(2) of the Government Code.¹

Next, you raise section 552.101 of the Government Code for some of the remaining 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 incorporates the doctrine of 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types 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. In addition, this office has found that medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we agree that portions of the remaining information are highly intimate or embarrassing and not of legitimate public interest. Accordingly, except for the information we have marked for release, the sheriff must withhold the information you have marked under section 552.101 in conjunction with common-law privacy. However, the remaining information is not intimate or embarrassing or is of legitimate public interest. Thus, the sheriff may not withhold any of the remaining information under section 552.101 and common-law privacy.

We note that some of the remaining information is excepted from disclosure under section 552.130 of the Government Code.² Section 552.130 excepts from disclosure information that relates to a Texas motor vehicle operator’s or driver’s license or permit or a Texas motor vehicle title or registration. Gov’t Code § 552.130(a)(1), (2). We note the requestor has a right of access to her own Texas driver’s license information. *Id.* § 552.023 (person has special right of access to information held by governmental body that relates to

¹As our ruling on this issue is dispositive, we do not address your remaining argument against disclosure of this information.

²The Office of the Attorney General will raise a mandatory exception like section 552.130 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

person and that is protected from public disclosure by laws intended to protect person's privacy interests). We have marked Texas motor vehicle record information that must be withheld under section 552.130 of the Government Code.

In summary, except for basic information, the sheriff may withhold case number C09-06-2065 under section 552.108(a)(2) of the Government Code. Except for the information we have marked for release, the sheriff must withhold the information you have marked in the remaining information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the information we have marked pursuant to section 552.130 of the Government Code. As you raise no further exceptions against disclosure, the sheriff must release the remainder of the submitted information.³

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, toll free, at (888) 672-6787.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

³We note the remaining information includes social security numbers belonging to individuals other than the requestor. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. We also note that the remaining information being released contains the requestor's confidential information, to which the requestor in this instance has a special right of access. See Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). If the sheriff receives another request for this particular information from a different requestor, then the sheriff should again seek a decision from this office.

Ref: ID# 362213

Enc. Submitted documents

cc: Requestor
(w/o enclosures)