



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2010

Mr. Michael J. Sandlin
Assistant District Attorney
Dallas County
Frank Crowley Courts Building
133 North Industrial Boulevard, LB-19
Dallas, Texas 75207-4399

OR2010-07124

Dear Mr. Sandlin:

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# 379743.

The Dallas County District Attorney (the "district attorney") received a request for prosecution records on a named individual regarding a specified case. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a search warrant signed by a magistrate. Section 552.022 of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Although the district attorney seeks to withhold this information under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver); *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103). As such, sections 552.103 and 552.108 are not other laws that make

information expressly confidential for purposes of section 552.022(a)(17). Therefore, the district attorney may not withhold the search warrant, which we have marked, under sections 552.103 and 552.108 of the Government Code. You also raise sections 552.101 and 552.130 of the Government Code for the search warrant, which are "other law" for purposes of section 552.022. We note, however, that while you raise section 552.101 in conjunction with common-law privacy, information that has been filed with a court is not protected by common-law privacy.¹ See *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Accordingly, the district attorney may not withhold the search warrant based on section 552.101 of the Government Code in conjunction with common-law privacy. We further note the search warrant does not contain any Texas motor vehicle record information. Accordingly, section 552.130 is not applicable to this document. However, we will address section 552.101 in conjunction with constitutional privacy for this information and for the information not subject to 552.022. We will also address your other arguments for the remaining information.

We next address your argument under section 552.108 for the information not subject to section 552.022. 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. 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 submitted information relates to a pending criminal investigation. Based on this representation and our review, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to the information not subject to section 552.022.

We note, however, 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). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes the identity of the complainant and a detailed description of the offense. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, the

¹Section 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 the doctrine of common-law privacy.

district attorney may withhold the remaining information not subject to section 552.022 under section 552.108(a)(1) of the Government Code.²

You assert a portion of the basic information is protected by common-law privacy. Section 552.101 of the Government Code encompasses 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. *See 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. *See id.* at 681-82. The types of information considered highly intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. Upon review, we find the district attorney has not demonstrated how any of the basic information constitutes information that is highly intimate or embarrassing and not of legitimate public interest. Therefore, none of this information may be withheld on the basis of common-law privacy.

You also contend a portion of the basic information and the search warrant subject to 552.022 are excepted from public disclosure under constitutional privacy, which is also encompassed by section 552.101 of the Government Code. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)).

Upon review, we find the district attorney has not demonstrated how any of the basic information or the information subject to 552.022 falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the district attorney may not withhold any of the information at issue under section 552.101 on the basis of constitutional privacy.

²As we are able to make this determination under section 552.108(a)(1), we need not address your remaining arguments against disclosure, except to note that section 552.103 of the Government Code generally does not except from disclosure the same basic information that is subject to section 552.108(c). *See* Open Records Decision No. 597 (1991).

In summary, the district attorney must release the search warrant we have marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, the district attorney may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 379743

Enc. Submitted documents

c: Requestor
(w/o enclosures)