



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2011

Mr. Charles Brancaccio
Assistant County Attorney
Johnson County
204 South Buffalo Avenue, Fourth Floor, Suite 410
Cleburne, Texas 76033-5404

OR2011-09976

Dear Mr. Brancaccio:

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# 423686.

The Johnson County Sheriff's Office (the "sheriff") and the Johnson County Attorney's Office (collectively the "county") received four requests from three requestors for 9-1-1 calls, dashboard camera video, and radio traffic pertaining to a specified incident. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You claim the submitted information is excepted by section 552.108(a) of the Government Code. Section 552.108(a) of the Government Code provides, in relevant part, the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in a conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (a)(2). We note that the protections offered by subsections 552.108(a)(1) and 552.108(a)(2) of the Government Code are, generally, mutually exclusive. Section 552.108(a)(1) generally applies to information that pertains

to criminal investigations or prosecutions that are currently pending, while section 552.108(a)(2) protects law enforcement records that pertain to criminal investigations and prosecutions that have concluded in final results other than criminal convictions or deferred adjudications. 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, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the submitted information is part of an investigative file which is under active investigation by the sheriff. However, you also state the information at issue pertains to an investigation that did not result in conviction or deferred adjudication. Based on your conflicting representations, we are unable to determine whether the information relates to an ongoing criminal case or a closed case that did not result in conviction or deferred adjudication. Thus, we conclude the county has failed to demonstrate the applicability of either section 552.108(a)(1) or section 552.108(a)(2) to the submitted information. Therefore, the county may not withhold the submitted information under section 552.108 of the Government Code.

We note the submitted information contains information subject to sections 552.101 and 552.130 of the Government Code.¹ 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. Section 552.101 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). The type of information considered intimate or 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. This office has found some kinds of medical information or information indicating disabilities or specific illnesses is protected by 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 find the information we have indicated in the submitted audio recordings is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the county must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 excepts from disclosure information that relates to a motor vehicle title or registration issued by an agency of this state or another state or country. Act of

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos.* 481 (1987), 480 (1987), 470 (1987).

May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130(a)(2)). Upon review, we find the county must withhold the license plate numbers in the submitted video recordings and the motor vehicle information we have indicated in the submitted audio recording under section 552.130 of the Government Code.²

In summary, the county must withhold the information we have indicated in the submitted audio recordings under section 552.101 of the Government Code in conjunction with common-law privacy. The county must withhold the license plate numbers in the submitted video recordings and the motor vehicle information we have indicated in the submitted audio recording under section 552.130 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, 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 423686

Enc. Submitted documents

cc: Requestors
(w/o enclosures)

²Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including the portion of any video depicting discernible Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.