



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 6, 2014

Mr. Paul J. Stewart
First Assistant County Attorney
Fort Bend County Attorney's Office
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2014-03876

Dear Mr. Stewart:

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# 515880.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information pertaining to five specified incidents and information pertaining to the requestor's address for a specified time period. You state the sheriff's office will release some of the requested information. You claim 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 representative sample of information.¹

Initially, we note report numbers 07-165 and 12-4511 involve alleged violations of section 32.51 of the Penal Code, which provides that "[a] person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of: (1) identifying information of another person without the other person's consent[.]"

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Penal Code § 32.51(b)(1). For purposes of section 32.51, "identifying information" includes an individual's name, date of birth, and social security number or other government-issued identification number. *Id.* § 32.51(a)(1). Article 2.29 of the Code of Criminal Procedure pertains to alleged violations of section 32.51 that occurred on or after September 1, 2005 and provides:

(a) A peace officer to whom an alleged violation of Section 32.51, Penal Code, is reported shall make a written report to the law enforcement agency that employs the peace officer that includes the following information:

- (1) the name of the victim;
- (2) the name of the suspect, if known;
- (3) the type of identifying information obtained, possessed, transferred, or used in violation of Section 32.51, Penal Code; and
- (4) the results of any investigation.

(b) On the victim's request, the law enforcement agency shall provide the report created under Subsection (a) to the victim. In providing the report, the law enforcement agency shall redact any otherwise confidential information that is included in the report, other than the information described by Subsection (a).

Crim. Proc. Code art. 2.29. For purposes of article 2.29, an offense is committed on or after September 1, 2005 if no "element of the offense occurs before that date." Act of Jun. 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885.

In this instance, report number 07-165 pertains to a forgery and report number 12-4511 pertains to an allegation of fraud, each of which constitutes an alleged violation of section 32.51. We note the alleged offenses occurred after September 1, 2005. We further note the requestor is the victim in report numbers 07-165 and 12-4511. Therefore, these reports are subject to article 2.29 of the Code of Criminal Procedure and must be released to the requestor, except to the extent the reports contain confidential information. *See* Crim. Proc. Code art. 2.29. Although you claim report numbers 07-165 and 12-4511 are excepted from disclosure under section 552.108 of the Government Code, section 552.108 is a discretionary exception that does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, report numbers 07-165 and 12-4511 may not be withheld from this requestor under section 552.108 of the Government Code. However, we note portions of report number 07-165 are excepted under

section 552.130 of the Government Code.² Because section 552.130 is a confidentiality provision, we will address the applicability of this exception to report number 07-165.

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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

Report numbers 13-4248 and 13-4278 each contain information that satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, the submitted information reveals the requestor knows the identity of the individual involved as well as the nature of the information in report numbers 13-4248 and 13-4278. Therefore, withholding only the individual's identity or certain details of these incidents from this requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the sheriff's office must withhold report numbers 13-4248 and 13-4278 in their entireties under section 552.101 of the Government Code in conjunction with common-law privacy.³

Section 552.108(a)(2) 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: . . . (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 conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report numbers 07-2602 and 13-7680 pertain to criminal cases that concluded in results other

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

than convictions or deferred adjudications. Based on your representations, we agree section 552.108(a)(2) is applicable to report numbers 07-2602 and 13-7680.

We note, however, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 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 also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic information, the sheriff's office may withhold report numbers 07-2602 and 13-7680 under section 552.108(a)(2) of the Government Code.⁴

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We conclude the sheriff's office must withhold the information we have marked under section 552.130 of the Government Code.⁵

In summary, the sheriff's office must withhold report numbers 13-4248 and 13-4278 in their entireties under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the basic information, which must be released, the sheriff's office may withhold report numbers 07-2602 and 13-7680 under section 552.108(a)(2) of the Government Code. The sheriff's office must withhold the information we have marked under section 552.130 of the Government Code. The sheriff's office must release the remaining information.⁶

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.

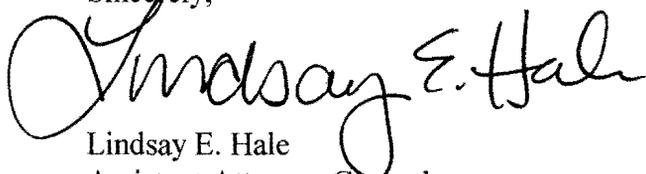
⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁵We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

⁶Because the requestor has a special right of access to the information being released from report numbers 07-165 and 12-4511, if the sheriff's office receives another request for this information from an individual other than this requestor, the sheriff's office must again seek a ruling from this office. *See* Crim. Proc. Code art. 2.29.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 515880

Enc. Submitted documents

c: Requestor
(w/o enclosures)