



January 22, 2015

Mr. Vance Hinds
Assistant Ellis County & District Attorney
County of Ellis
109 South Jackson
Waxahachie, Texas 75165

OR2015-01213

Dear Mr. Hinds:

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# 550994.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for (1) the sheriff's office policy and procedures manual; (2) any general orders, addendums, or supplemental additions to the policy and procedures manual; and (3) directives, communications, or instructions related to handling or dealing with evidence or a crime or reported offense. You state you have released some information to the requestor. 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 information. We have received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we address the requestor's assertion the sheriff's office failed to comply with section 552.301 of the Government Code. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(b). In this instance, you state the sheriff's office received the request for information on October 24, 2014. This office does not count the date

the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the sheriff's office's ten-business-day deadline was November 7, 2014. The envelope in which the sheriff's office sent its request for a ruling to this office was postmarked November 6, 2014. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we find the sheriff's office complied with section 552.301(b) of the Government Code in requesting a ruling from this office.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. *Id.* § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989). A governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). 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 Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) 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), 252 (1980) (section 552.108 of the Government Code 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). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state the submitted information consists of portions of the sheriff's office's policies and procedures that, if released, would interfere with law enforcement or prosecution of crime. You state release of the submitted information would "impair a law enforcement officer's ability to apprehend, arrest, investigate, safely control in jail, and prosecute a defendant." Based on your representations and our review, we agree the release of some of the submitted information, which we have marked, would interfere with law enforcement. Accordingly, the sheriff's office may withhold the information we have marked under section 552.108(b)(1) of the Government Code. However, we find you have not demonstrated how release of any of the remaining information would interfere with law enforcement or crime prevention. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.108(b)(1).

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. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *See id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683. Upon review, we find you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses constitutional privacy. 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 Open Records Decision No. 455 at 4* (1987). 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. *Id.* 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.* The information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find you have failed to demonstrate any of the remaining information falls within the zones of privacy or implicates an individual’s privacy interests for purposes of constitutional privacy. Therefore, the sheriff’s office may not withhold any of the remaining information under section 552.101 on the basis of constitutional privacy.

In summary, the sheriff’s office may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The sheriff’s office must release the remaining information.

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.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, appearing to read 'Cristian Rosas-Grillet', with a stylized flourish at the end.

Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 550994

Enc. Submitted documents

c: Requestor
(w/o enclosures)