



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 7, 2016

Mr. Michael Lindsay Ray
Sheriff
Van Zandt County Sheriff's Office
1220 West Dallas
Canton, Texas 75103

OR2016-07863

Dear Sheriff Ray:

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# 604716.

The Van Zandt County Sheriff's Office (the "sheriff's office") received a request for certain information pertaining to a specified incident. You state you do not have information responsive to portions of the request.¹ You claim some of the information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we address your argument that Exhibits E, F, and G are not subject to the provisions of the Act because they are records of the judiciary. The Act is applicable to information "written, produced, collected, assembled, or maintained under a law or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). However, the Act's definition of "governmental body" does not include the judiciary. *See*

¹The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

id. § 552.003(1)(B). Information “written, produced, collected, assembled, or maintained by or for the judiciary” is not subject to the Act but, instead, is “governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.” *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under section 552.003(1)(B) of the Government Code prior to enactment of Government Code section 552.0035). Therefore, the Act neither authorizes information held by the judiciary to be withheld, nor does it require such information be disclosed. *See* Open Records Decision No. 25 (1974). You state Exhibits E, F, and G “have been executed or completed by a member of the judiciary and are therefore excluded from [the Act].” Upon review, we find the sheriff’s office has failed to demonstrate Exhibits E, F, and G consist of records of the judiciary. Further, we find the information at issue is held by the sheriff’s office in its own capacity and, therefore, is subject to the Act. *See* Gov’t Code § 552.002. Accordingly, we will address the applicability of the Act to the information at issue.

Next, we note Exhibits E, F, and G are subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Id. § 552.022(a)(17). This information, which we have marked, consists of court-filed documents and must be released unless it is made confidential under the Act or other law. Although you assert this information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy, we note information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). As such, the sheriff’s office may not withhold the information that is subject to section 552.022 under section 552.101 in conjunction with common-law privacy. As no other exceptions to disclosure have been raised for this information, it must be released.

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 . . . 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 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 the remaining information pertains to a criminal case that concluded in a result other than conviction or deferred adjudication. Based on your representation, we agree section 552.108(a)(2) is applicable to the remaining information.

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). Basic information includes, among other items, an identification and description of the complainant, a detailed description of the offense, and any property involved. *See Houston Chronicle*, 531 S.W.2d at 186-87; ORD 127. The sheriff’s office must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. Thus, with the exception of the basic front page offense and arrest information, the sheriff’s office may withhold the remaining information under section 552.108(a)(2).²

We understand you to assert the basic information is excepted from disclosure under common-law privacy. 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. Upon review, we find the sheriff’s office has failed to demonstrate any portion of the basic information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the sheriff’s office may not withhold any portion of the basic information under section 552.101 in conjunction with common-law privacy and it must be released.

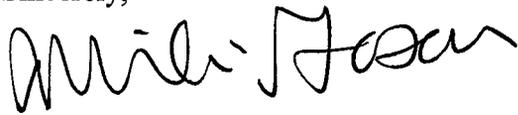
In summary, the sheriff’s office must release Exhibits E, F, and G pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, which must be released, the sheriff’s office may withhold the remaining information under section 552.108(a)(2) of the Government Code.

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this 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 that reads "Mili Gosar". The signature is written in a cursive, flowing style.

Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 604716

Enc. Submitted documents

c: Requestor
(w/o enclosures)