



October 22, 1999

Mr. Dale A. Rye
Office of Williamson County Attorney
Courthouse Annex, Second Floor
Box 7
Georgetown, Texas 78626

OR99-3000

Dear Mr. Rye:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128427.

The Williamson County Sheriff (the "sheriff"), on whose behalf you seek this decision, received an open records request for certain records pertaining to a criminal case that resulted in a conviction of the defendant. You state that some of the requested information either does not exist or "is in the custody of someone else."¹ You suggest that to the extent that the sheriff possesses records responsive to the request, he need not comply with the request pursuant to section 552.028 of the Government Code, which permits governmental bodies to decline to accept or comply with requests for information submitted by inmates or their agents. Section 552.028, as amended by the 76th Legislature, provides in pertinent part as follows:

(a) A governmental body is not required to accept or comply with a request for information from:

(1) an individual who is imprisoned or confined in a correctional facility; or

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under this chapter.

¹We note, however, that any records within the constructive possession of the sheriff would continue to be subject to the current request. See Gov't Code § 552.002(a)(2).

You have submitted to this office in connection with the current request a letter from the Williamson County District Attorney's Office (the "district attorney"), which suggests that the requestor, in asking for the information at issue, may be acting as an agent of the incarcerated defendant. The district attorney does not, however, actually represent that such is the case. In fact, the letter states that district attorney does "not have any information about who [the requestor] is." We also note that you have not made such a representation on behalf of the sheriff. We conclude, therefore, that the sheriff may not withhold the requested information pursuant to section 552.028.

You next contend that the requested records are exempt from public disclosure pursuant to section 552.027 of the Government Code. Section 552.027 exempts from required public disclosure "a commercial book or publication purchased or acquired by the governmental body for research purposes" and clearly is not applicable here. The sheriff may not withhold any information under section 552.027.

The district attorney also contends that the requested information may be withheld pursuant to section 552.108 of the Government Code. Section 552.108(a)(1) protects from public disclosure information pertaining to active criminal investigations or prosecutions. Section 552.108(a)(2) protects law-enforcement and prosecution records that did not result in a conviction or deferred adjudication. Section 552.108(a)(3) protects records containing the "work product" of prosecutors. You have not shown the applicability of these exceptions to the records at issue. We conclude that this exception is inapplicable here.

Finally, although it is not clear to this office, it appears that you may have intended to evoke the protection of section 552.103(b) of the Government Code. The sheriff has the burden of providing relevant facts and documents to show that the section 552.103(b) exception is applicable in a particular situation. The test for meeting this burden is a showing that 1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). To demonstrate that litigation is reasonably anticipated, the sheriff must furnish concrete evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989).

In this instance, we conclude that you have failed to meet the requisite showing that litigation is reasonably anticipated. Therefore, the sheriff may not withhold any of the requested information pursuant to section 552.103(b). We conclude, therefore, that the sheriff must release the requested records in their entirety, with the following exception.

We note that some of the records at issue contain the social security numbers of certain peace officers. Section 552.117(2) of the Government Code makes confidential, among other things, the social security number of a peace officer as defined by article 2.12, Code of Criminal Procedure. Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988). Accordingly, the sheriff must withhold the officers' social security numbers. As noted above, the remaining information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/RWP/nc

Ref.: ID#128427

cc: Ms. Vivian Phillips
3816 South Lamar, # 3807
Austin, Texas 78704
(w/o enclosures)