



September 17, 2001

Ms. Sharon Hicks
City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604

OR2001-4144

Dear Ms. Hicks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152057.

The Abilene Police Department (the "department") received four written requests for all records pertaining to a triple homicide that occurred in June 1990.¹ You note that although this office has previously ruled that the information at issue was excepted from public disclosure pursuant to section 552.108 of the Government Code, *see* Open Records Letter No. 97-0925 (1997), you are requesting another ruling from this office at this time because "amendments have been made to Chapter 552 since the last opinion was obtained." You contend that the requested information, representative samples of which you submitted to this office, is excepted from disclosure pursuant to the common law right of privacy and section 552.108(a)(1) of the Government Code.²

¹You inform us that although the requestor also seeks all records pertaining to the defendants' "detention or incarceration," the department does not possess any such records.

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other information to the extent that the requested records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information that relates 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. 540 S.W.2d at 683. This office has also determined that common law privacy protects the following information: the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987); the results of mandatory urine testing, *id.*; illnesses, operations, and physical handicaps of applicants, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); the names of parents of victims of sudden infant death syndrome, Attorney General Opinion JM-81; and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress. Open Records Decision No. 343 (1982).

Upon review, we conclude that none of the information submitted to this office is highly intimate or embarrassing so as to implicate any individual's privacy interests. Accordingly, the department may not withhold any of the requested information on privacy grounds.

Section 552.108(a)(1) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Section 552.108(a)(1) protects information pertaining to a pending criminal investigation or prosecution because the release of such information presumptively would interfere with the detection, investigation, or prosecution of crime. *See 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).

In this instance, however, the records at issue relate to a criminal prosecution that has resulted in criminal convictions. Furthermore, this office has confirmed that the criminal appeals and the habeas corpus actions before the Court of Criminal Appeals have each been concluded. You have not otherwise demonstrated how the release of the requested documents would interfere with legitimate law enforcement interests. Consequently, we conclude that you have not met your burden of demonstrating the applicability of section 552.108(a)(1) to the records at issue. We therefore conclude that the department may not withhold the information at issue pursuant to section 552.108(a)(1). The information must be released in its entirety, with the following exception.

We note that the records at issue contain information that must be withheld pursuant to section 552.130(a)(1) of the Government Code, which requires the department to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Also, section 552.130(a)(2) of the Government Code requires the withholding of information relating to "a motor vehicle title or registration issued by an agency of this state." Consequently, the department must withhold all Texas driver's license numbers and all Texas license plate numbers and registration information contained in the records at issue pursuant to section 552.130.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/RWP/seg

Ref: ID# 152057

Enc. Submitted documents

c: Ms. Danalynn Recer
Louisiana Crisis Assistance Center
412 Main Street
Houston, Texas 77002
(w/o enclosures)