



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

January 27, 2003

Ms. Ashley D. Fourn  
Assistant District Attorney  
County of Tarrant  
401 W. Belknap  
Fort Worth, Texas 76196-0201

OR2003-0540

Dear Ms. Fourn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175537.

The Tarrant County Sheriff's Department (the "department") received a request for all reports regarding two specified individuals in incidents against a third individual. You claim that a portion of the requested 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.

Initially, we note that portions of the submitted information are subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

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

Gov't Code § 552.022(a)(17). Thus, this information must be released to the public unless it is confidential under other law. Section 552.101 is "other law" for the purpose of section 552.022.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201 of the Family Code reads in part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We conclude that the section 552.022 documents, as well as the non-section 552.022 documents, related to case number 01181860 consist of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. Because you have not cited any specific rule that the department has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, these documents are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, the department must not release this information.<sup>1</sup>

In regard to offense report number 718719, section 552.101 also encompasses common-law privacy, which 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

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<sup>1</sup>We note that if the investigation has been referred to the Department of Protective and Regulatory Services (the "department"), a parent who is a requestor may be entitled to access to the department's records. Section 261.201(g) of the Family Code provides that the department, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating 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. *Id.* at 683. With certain types of intimate and embarrassing records, this office has previously concluded that, generally, only information that identifies or tends to identify the victim must be withheld under section 552.101 in conjunction with common-law privacy. *See, e.g.*, Open Records Decision Nos. 393 (1983), 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment is highly intimate or embarrassing information and public does not have legitimate public interest in such information). With other types of intimate and embarrassing records, this office requires a governmental body to withhold information describing the conduct at issue. In this instance, the submitted records indicate that the requestor knows both the identity of the victim and the nature of the conduct at issue. Under these circumstances, we conclude that the department must withhold offense report number 718719 in its entirety in order to protect the individual's common-law privacy interests.

Finally, section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You assert that the remaining requested information pertains to investigations that concluded in a result other than conviction or deferred adjudication. Upon review of the submitted information, we agree that section 552.108(a)(2) is applicable.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such 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). Thus, with the exception of the basic front page offense and arrest information which you claim to have released, you may withhold the remaining submitted information from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, we conclude that: 1) all documents related to case number 01181860 must be withheld in its entirety pursuant to section 552.101 in conjunction with section 261.201 of the Family Code; 2) offense report number 718719 must be withheld in its entirety pursuant to section 552.101 and the common-law right to privacy; and 3) with the exception of the

basic front page offense and arrest information, you may withhold the remaining submitted information based on section 552.108 of the Government Code.

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 Texas Building and Procurement 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. We note that a third party may challenge

this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/lmt

Ref: ID# 175537

Enc: Submitted documents

c: Ms. Tera Senn Teague  
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(w/o enclosures)