



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

April 17, 2003

Mr. Brendan Guy
Assistant County Attorney
Henderson County
Henderson County Courthouse, Room 100
Athens, Texas 75751

OR2003-2644

Dear Mr. Guy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179708.

The Henderson County Sheriff's Office (the "sheriff") received a written request for all criminal records pertaining to a named individual. You contend that the documents you submitted to this office as responsive to the request are excepted from required disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure "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 that is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* that is of no legitimate concern to the public. *Id.* at 683-85.

In *Industrial Foundation*, the Texas Supreme Court included information relating to attempted suicides among the types of information considered intimate and embarrassing for purposes of common-law privacy. *See Industrial Found.*, 540 S.W.2d at 683. You describe one of the incident reports you submitted to this office as being responsive to the request as relating to an attempted suicide. In most cases, the sheriff would be allowed to withhold only that information that revealed whether an individual had attempted suicide. In this instance, however, it is apparent that the requestor knows the identity of the individual who attempted suicide. Consequently, withholding only certain details of the incident from the requestor would not preserve the named individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, we conclude that the

sheriff must withhold this incident report in its entirety pursuant to section 552.101 of the Government Code.

Finally, you contend that an offense report you submitted to this office is excepted from required public disclosure pursuant to section 552.108(a)(1) of the Government Code, which exempts 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 it is presumed that the release of such information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g 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). Because you state that the information in this offense report pertains to a pending criminal prosecution, we conclude that the sheriff may withhold most of this information pursuant to section 552.108(a)(1) of the Government Code.

Section 552.108 does not, however, exempt from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). The sheriff must therefore release these types of information, including a detailed description of the offense, regardless of whether the basic information is actually contained on the front page of an offense report, in accordance with *Houston Chronicle*; *see also* Open Records Decision No. 127 (1976).

In summary, the sheriff must withhold on privacy grounds all records of alleged criminal violations, to the extent those records exist, in which the named individual is identified as either an arrestee, suspect, or criminal defendant. The sheriff must also withhold the documents you submitted to this office as Exhibit 4 pursuant to section 552.101 in conjunction with the common-law right of privacy. The sheriff may withhold most of the information submitted as Exhibits 2 and 3 pursuant to section 552.108(a)(1), but must release all basic information contained in those documents.

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).

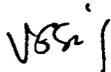
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/RWP/seg

Ref: ID# 179708

Enc: Submitted documents

c: Mr. Dale Geddie
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(w/o enclosures)