



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 9, 2004

Ms. Judith Sachitano Rawls
Police Administrative Legal Counsel
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2004-0934

Dear Ms. Rawls:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 195989.

The Beaumont Police Department (the "department") received a request for "any and all reports or related paperwork" pertaining to a homicide that occurred on January 31, 1977. You claim that the requested information is excepted from disclosure pursuant to subsections 552.108(b)(1) and 552.108(b)(2) of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.108 provides in pertinent part:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution [or];

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(b)(1), (b)(2). Section 552.108(b)(2) protects records pertaining to a criminal investigation or prosecution that concluded in a final result other than conviction or a deferred adjudication. Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information at issue "appears to relate to an investigation that did not result in conviction or deferred adjudication . . .," and that this information "relates to an investigation that apparently did not result in conviction or adjudication." However, you also state that the submitted information is part of a pending investigation. Because you have provided this office with conflicting information, we cannot conclude that the information at issue relates to a case that has resulted in a final conclusion other than conviction or deferred adjudication. Thus, the department has not demonstrated the applicability of section 552.108(b)(2) to the information at issue. Accordingly, we conclude that the department may not withhold any portion of the information at issue from disclosure pursuant to section 552.108(b)(2) of the Government Code.

You also raise section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in [a law enforcement agency], avoid detection, jeopardize officer safety, and generally undermine [law enforcement] efforts to effectuate the laws of this State." *City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.-Austin 2002, no pet.)

This office has stated that under the statutory predecessor to section 552.108(b), a governmental body may withhold information that would reveal law enforcement techniques or procedures. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 (1987) (release of forms containing information regarding location of off-duty police officers in advance would unduly interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would unduly interfere with law enforcement), 409 (1984) (if information regarding certain burglaries exhibit pattern that reveals investigative techniques, information is excepted under predecessor section 552.108), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers licenses), 252 (1980) (predecessor section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific

operations or specialized equipment directly related to investigation or detection of crime may be excepted).

To claim this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Generally known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common-law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known). Whether disclosure of particular records will interfere with law enforcement or prosecution must be decided on a case-by-case basis. *See* Attorney General Opinion MW-381 (1981).

You assert that the release of the submitted information would have a "chilling effect" on law enforcement work, and state that the release of the submitted information "would interfere with law enforcement investigative techniques, strategy and work product." You further object to the release of the information on the basis that "the investigator's techniques, mental impressions and thought processes are the work product for a District Attorney's office, and, as such, the release of such techniques would interfere with the detection, investigation or prosecution of crime." Upon review your arguments, we conclude that you have not adequately demonstrated that the release of this submitted information would interfere with law enforcement or crime prevention. Therefore, the department may not withhold the submitted information under section 552.108(b)(1).

We also note, however, that portions of the information at issue are excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy. Information is protected from disclosure under the common-law right to privacy if (1) it contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person; and (2) it is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included, for example, 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. *See id.* at 683. This office has found that the following types of information are excepted from required public disclosure under constitutional or common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open

Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Accordingly, we conclude that the department must withhold from the requestor the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.¹

Finally, we note that the information at issue contains what appears to be a Texas driver's license that is excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, we conclude that the department must withhold the information that we have marked pursuant to section 552.130 of the Government Code if the marked information is a Texas driver's license.²

In summary, the department must withhold from the requestor the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The department must withhold the information that we have marked pursuant to section 552.130 of the Government Code if the marked information is a Texas driver's license. The department must release to the requestor the remaining submitted information.

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

¹This aspect of our ruling is premised on the assumption that the individual whose information we have marked is still living. *See Moore v. Charles B. Pierce Film Enterprises Inc.*, 589 S.W.2d 489 (Tex. Civ. App.--Texarkana 1979, writ ref'd n.r.e.) (right of privacy is purely personal and lapses upon death); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976).

²Again, we note that because the right of privacy is purely personal and lapses at death, the department may only withhold the section 552.130 information of a living individual under this exception to disclosure.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 195989

Enc. Marked documents

c: Ms. Carol Derouen
P.O. Box 8041
Lumberton, Texas 77657
(w/o enclosures)