



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2005

Mr. R. Kelton Conner
County Attorney
Hood County
130 N. Houston
Granbury, Texas 76048

OR2005-04763

Dear Mr. Conner:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 225190.

The Hood County Attorney's Office (the "county attorney"), the Hood County Sheriff, and the Justice of the Peace Precinct 1 and 2 received a request for any and all documents, including handwritten notes, regarding the investigation and trial of criminal assault charges against three named individuals. You inform us that certain responsive information has been released to the requestor. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. In addition, you claim that a portion of the requested information need not be released pursuant to section 552.027 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we address the requestor's request for the Justice of the Peace's handwritten notes and "access to and review of the Texas State Law, Criminal Statutes, Codes or other documents" used by the Justice of the Peace to determine the guilt or innocence of the named individuals. The justice of the peace is a member of the judiciary. Section 552.003(b) of the Government Code excludes the judiciary from the Act. Therefore, the Act neither authorizes information held by the judiciary to be withheld nor requires that it be disclosed. *See* Open Records Decision No. 25 (1974). Accordingly, this information is not subject to public disclosure under chapter 552 of the Government Code, and the Open Records Division does not have the authority to rule on records maintained by the judiciary. Gov't Code § 552.0035 (access to information maintained by or for judiciary is governed by rules adopted by supreme court); *see* Tex. R. Jud. Admin. 12 (public access to judicial records). However, Texas courts have long recognized a common-law right to copy and inspect certain judicial records. Attorney General Opinion DM-166 at 2-3 (1992) (public has general right to inspect

and copy judicial records), H-826 (1976); Open Records Decision Nos. 618 (1993), 25 (1974); *see Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released). Additionally, the records may be subject to disclosure under statutory law. *See* Gov't Code § 27.004 (all papers filed in case in justice court are subject to inspection of any interested party at reasonable times); Loc. Gov't Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order).

We note that the submitted information contains emergency medical services ("EMS") records, which we have marked. The release of EMS records is governed by chapter 773 of the Health and Safety Code, which provides as follows:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). The submitted documents contain records of the identity, evaluation, or treatment of the requestor by EMS personnel. These records must be released upon the requestor's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *Id.* § 773.093(a). Accordingly, except for information enumerated in section 773.091(g), the EMS records we have marked are confidential under section 773.091(b) of the Health and Safety Code. However, the county attorney must release them upon receipt of proper consent pursuant to section 773.093(a).

We will now address your argument under section 552.108(a)(2) of the Government Code for the remaining information in the submitted offense reports. 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. Based on the information you provided, we understand you to assert that the submitted offense reports pertain to cases that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). 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, you may withhold the submitted offense reports from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining offense reports that is not otherwise confidential by law. Gov't Code § 552.007.

We finally address your argument under section 552.108(a)(4) of the Government Code for the submitted assistant county attorney's handwritten notes. Sections 552.108(a)(4) is applicable to information that was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that reflects the mental impressions or legal reasoning of an attorney representing the state. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You state that the submitted handwritten notes "reflect the mental impressions or legal reasoning" of the assistant county attorney. Upon review, we conclude that this information was either prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflects the mental processes or legal reasoning of an attorney representing the state. Therefore, we conclude that the submitted handwritten notes may be withheld from disclosure under sections 552.108(a)(4).

In summary, responsive information maintained by the Justice of the Peace is not subject to the Act, and therefore need not be released. The county attorney must withhold the marked EMS records, except for that information that section 773.091(g) makes public, under section 773.093 of the Health & Safety Code. However, the county attorney must release these records upon receipt of proper consent pursuant to section 773.093(a). With the exception of basic information, the county attorney may withhold the submitted offense reports under section 552.108(a)(2) of the Government Code. Finally, the county attorney may withhold the assistant county attorney's handwritten notes under section 552.108(a)(4) 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).

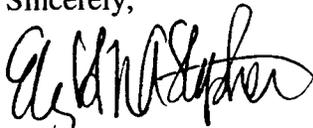
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Elizabeth A. Stephens
Assistant Attorney General
Open Records Division

EAS/krl

Ref: ID#225190

Enc. Submitted documents

c: Mr. Herman H. Meyers
8905 Halfway Hill Court
Granbury, Texas 76049
(w/o enclosures)