



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 29, 2005

Ms. Ann York
Cherokee County
Route 5, Box 275
Rusk, TX 75795

OR2005-11634

Dear Ms. York:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 239227.

The Cherokee County Sheriff (the "sheriff") received a request for all information related to two separate arrest incidents involving the requestor. You state that you have released some of the information to the requestor. You state that you are requesting a ruling as to whether the remaining documents are "public record." We have reviewed the submitted information.¹

Initially, we note that subsections 552.301(a) and (b) of the Government Code provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [Act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

¹We note that some of the submitted information is not responsive to the instant request. This ruling only addresses information responsive to the request at hand. See generally Gov't Code §§ 552.002, .021, .227, .351.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). Although the sheriff received the initial request for this information on May 21, 2005, you did not seek a decision from our office until the requestor submitted a subsequent request on October 14, 2005. Thus, the sheriff has failed to meet the requirements of subsections 552.301(a) and (b).

Further, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Additionally, subsection 552.301(e-1) requires that a governmental body send to the requestor a copy of its written comments to the attorney general. The sheriff did not, however, provide any of the submissions required by subsections 552.301(e) and (e-1). In fact, the sheriff has not raised any specific exception to any of the submitted information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Although you raise no exceptions to disclosure, we note that portions of the submitted information may be confidential under sections 552.101, 552.136, and 552.147 of the Government Code. These sections can provide a compelling reason to overcome the presumption of openness. Therefore, we will consider the applicability of these sections to the submitted information.² *See* Open Records Decision No. 630 (1994) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This

²The Office of the Attorney General will raise mandatory exceptions like sections 552.101, 552.136, and 552.147 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section encompasses information protected by other statutes. Sections 560.001, 560.002, and 560.003 of the Government Code provide as follows:

Sec. 560.001. DEFINITIONS. In this chapter:

- (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
- (2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 560.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

- (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
 - (A) the individual consents to the disclosure;
 - (B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or
 - (C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and
- (2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 560.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

Gov't Code §§ 560.001-.003. The submitted information contains fingerprint information belonging to the requestor. Generally, this information would be excepted from disclosure under section 560.003. However, in this instance, the requestor has a special right of access to her own fingerprint information. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information

concerning herself). Consequently, the sheriff must release the fingerprint information to the requestor.

Section 552.101 of the Government Code also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (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. 540 S.W.2d at 683. The submitted documents contain information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. In most cases, the sheriff would be required to withhold this information. In this instance, however, the requestor has a special right of access to the information that would normally be protected under common law privacy as it concerns her. *See Gov't Code § 552.023(a)*. Accordingly, this information may not be withheld from this requestor.

The submitted information contains bank account numbers. Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. The sheriff must, therefore, withhold the marked bank account numbers under section 552.136.

Finally, the submitted information contains a social security number. Section 552.147 of the Government Code³ provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Normally, the sheriff would be required to withhold the social security number contained in the submitted information under section 552.147.⁴ However, the requestor has a right to her own social security number and it must be released to her. *See Gov't Code § 552.023(a)*.

³Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov’t Code § 552.147).

⁴We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

In summary, the sheriff must withhold the marked bank account numbers under section 552.136 of the Government Code. The remaining information must be released.⁵

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); *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 Office of the Attorney General at (512) 475-2497.

⁵ We note that because the requestor has a special right of access, in this instance, to her social security number, fingerprints, and medical information, the sheriff must again seek a decision from this office if it receives another request for the same information from another requestor.

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,

A handwritten signature in cursive script that reads "Amanda Crawford". The signature is written in black ink and is positioned above the typed name and title.

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/krl

Ref: ID# 239227

Enc. Submitted documents

c: Ms. Judith Lynn Metcalf Scott
c/o 1340 VZCR 2306
Canton, Texas near 75103
(w/o enclosures)