



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2006

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2006-13932

Dear Ms. Lentz:

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# 265501.

The Williamson County Sheriff's Office (the "sheriff") received a request for (1) incident report 92-11-231, (2) incident report number 93-02-011 (3) felony criminal complaint and probable cause affidavits with respect to the above reports, (4) daily dispatch log for February 1, 1993, (5) daily shift card for two named officers from February 2, 1993, and (6) the report filed by a named officer on February 1, 1993. You state that the sheriff is not required to comply with the request pursuant to section 552.028 of the Government Code. In the alternative, you claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.028(a) provides that a governmental body is not required to accept or comply with a request for information from either of the following:

- (1) an individual who is imprisoned or confined in a correctional facility; or

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under this chapter.

Gov't Code § 552.028(a). In this instance, you state that the request for information was made by the agent of an individual imprisoned in a correctional facility and, therefore, the sheriff is not required to respond to the request. In support of this statement you assert that the requestor's return address is the same as an address listed for the imprisoned individual. Sharing an address with the requestor is insufficient to show that the requestor is acting as an imprisoned individual's agent. Thus, we find that you have failed to establish that the requestor is acting as the imprisoned individual's agent. Accordingly, we will address the sheriff's arguments against the disclosure of the submitted information.

Initially, we note that you have only submitted to this office offense report numbers 92-11-231 and 93-02-011. Thus, we assume that you have released the information responsive to the remaining four categories of requested information. If you have not released such information, you must do so now. See Gov't Code §§ 552.021, .221, .301, .302.

We also note that the submitted information is subject to section 552.022 of the Government Code. This section provides in part that

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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

Gov't Code § 552.022(a)(1). In this instance, the requested information relates to two completed investigations. These completed investigations must be released under section 552.022(a)(1) unless excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. You claim that the completed investigations are excepted from disclosure under section 552.103 of the Government Code. We note, however, that section 552.103 is a discretionary exception to public disclosure that protects a governmental body's interests and may be waived. See Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to section 552.103 subject to waiver). As such, section 552.103 is not "other law" that makes information confidential for the purposes of section 552.022. Therefore, the sheriff may not withhold the completed investigations under section 552.103. However, because the sheriff claims that the completed investigations, or portions thereof, are excepted

from disclosure under sections 552.101, 552.108, 552.130, and 552.147, we will address those arguments.

Section 552.108 of the Government Code provides, in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

(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 from [required public disclosure] if:

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

Gov't Code § 552.108(a)(1), (b)(1). 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 id.* §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 reports relate to a criminal prosecution in which the defendant was convicted and sentenced to two ninety-nine year terms, and you state that the appeals in this case concluded in 1995. You do not assert that there are any ongoing appeals with regard to this case. However, you assert that the inmate may file a writ at any time during his two ninety-nine year sentences. We find your assertion that a writ may be filed during the defendant's two ninety-nine year sentences is too speculative to provide a basis for withholding the requested information under section 552.108. We also note that a habeas corpus proceeding is a civil proceeding. Therefore, we conclude that you have failed to demonstrate how release of the submitted information would interfere with the detection, investigation, or prosecution of crime. Thus, the sheriff may not withhold the submitted information under section 552.108(a)(1) or (b)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by common-law privacy. Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See 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. *Id.* at 683. Based on your arguments and our review, we find that a portion of report number 92-11-231 contains information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. Accordingly, the sheriff must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information 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.” Gov’t Code § 552.130. The sheriff must withhold the marked Texas motor vehicle record information in accordance with section 552.130.

Finally, the submitted information also contain social security numbers. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147. The sheriff must withhold the marked social security numbers under section 552.147.¹

In summary you must withhold the information marked under common-law privacy. You must also withhold the Texas motor vehicle record information and social security numbers marked under sections 552.130 and 552.147. You must release the remaining 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 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

¹We 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.

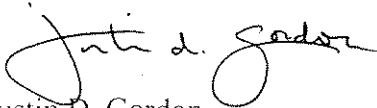
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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.

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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eb

Ref: ID# 265501

Enc. Submitted documents

c: Ms. Jessica Tolliver
P.O. Box 505
Elgin, Texas 78621
(w/o enclosures)