



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 19, 2008

Mr. Paul J. Stewart
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469-3108

OR2008-02245

Dear Mr. Stewart:

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# 302452.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for nine incident reports pertaining to a specified address. You state that some of the requested information has been released, but claim that the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The submitted incident reports 02-1701 and 04-10746 in Exhibit C consist of files, reports, records, communications or working papers used or developed in investigations under chapter 261; therefore, this information is within the scope of section 261.201. You do not indicate that the sheriff has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Based on this assumption, we conclude that the submitted incident reports 02-1701 and 04-10746 are confidential pursuant to section 261.201 of the Family Code, and the sheriff must withhold these incident reports in their entirety under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 also encompasses common-law privacy. Common-law privacy protects information that (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. *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. Information that either identifies or tends to identify a victim of sexual assault must be withheld under common-law privacy. *See* Open Records Decisions Nos. 393 (1983), 339 (1982). Upon review, we find that the sheriff must withhold the identifying information that we have marked in incident reports 04-6228 and 04-16713 under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code. Section 1703.306 of the Occupations Code governs information obtained in the course of conducting a polygraph examination and provides that "a person for whom a polygraph examination is conducted . . . may not disclose information acquired from a polygraph examination" except to certain categories of people. Occ. Code § 1703.306(a). The requestor does not appear to fall within any of the enumerated categories; therefore, the sheriff must withhold the polygraph information we have marked in the submitted information under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

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. Thus, the sheriff must withhold the information that we have marked in incident reports 04-6228 and 04-16713 under section 552.130 of the Government Code.

Finally, you note that the submitted information includes 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. The sheriff may withhold the social security number we have marked in incident reports 04-6228 and 04-16713 under section 552.147 of the Government Code.¹

In summary, the sheriff must withhold submitted incident reports 02-1701 and 04-10746 in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff must also withhold the identifying information that we have marked in incident reports 04-6228 and 04-16713 under section 552.101 in conjunction with common-law privacy. The sheriff must withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The sheriff must withhold the information that we have marked in incident reports 04-6228 and 04-16713 under section 552.130. The marked social security numbers may be withheld under section 552.147 of the Government Code. The remaining submitted information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

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.

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 challenge 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,



Jessica J. Maloney
Assistant Attorney General
Open Records Division

JJM/ma

Ref: ID# 302452

Enc. Submitted documents

c: Mr. Merlyn D. Moor
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(w/o enclosures)