



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 28, 2008

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

OR2008-10183

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# 317163.

The Williamson County Sheriff's Office (the "sheriff") received a request for all reports related to the requestor. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information contains a document filed with a court, which is made public under section 552.022(a)(17) of the Government Code. *See* Gov't Code § 552.022(a)(17). Such information must be released unless it is expressly confidential under other law. Section 552.108 is a discretionary exception that protects a governmental body's interests and is therefore not "other law" for purposes of section 552.022(a)(17). *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the sheriff may not withhold the court-filed document under section 552.108. You also raise section 552.101 of the Government Code in conjunction with common-law privacy for this

¹We note that the requestor agreed to the redaction of any social security numbers, Texas driver's license numbers, Texas license plate numbers, and vehicle identification numbers. Therefore, the sheriff need not release such information and this ruling does not address its public availability.

information.² We note, however, that information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Accordingly, the sheriff may not withhold the court-filed document based on section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no other arguments against the disclosure of the court-filed document, it must be released.

Next, we address your argument under section 552.108 of the Government Code for the remaining information. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). 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. In this instance, you state that the requested information relates to criminal investigations that ended in a result other than conviction or deferred adjudication. Based on this representation, we conclude that section 552.108(a)(2) is applicable to the remaining information.

We note that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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), and includes a detailed description of the offense, as well as the names of the arresting and investigating officers. With the exception of basic information, the sheriff may withhold the remaining information under section 552.108(a)(2) of the Government Code.

You assert, however, that some of the basic information should not be released on the basis of section 552.101 of the Government Code and common-law privacy. In Open Records Decision No. 169 (1977), this office recognized that information that would ordinarily be subject to disclosure may be withheld under section 552.101 in conjunction with common-law privacy on a showing of "special circumstances." This office considers such "special circumstances" to refer to a very narrow set of situations in which release of the information at issue would likely cause someone to face "an imminent threat of physical danger." Open Records Decision No. 169 at 6 (1977). "Special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* You state that the release of the information identifying an undercover peace officer would put this officer's life at risk. Based on this representation, and our review, we find that the sheriff must withhold the

²Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy.

basic information you have marked that identifies an undercover peace officer pursuant to section 552.101 on the basis of common-law privacy and special circumstances.

In summary, the sheriff must release the marked court-filed document pursuant to section 552.022(a)(17). With the exception of the information you have marked as protected under section 552.101 of the Government Code in conjunction with common-law privacy and special circumstances, the sheriff must release basic information. The remaining information may be withheld pursuant to section 552.108(a)(2) 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 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). If the governmental body does not file suit over 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 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,

A handwritten signature in cursive script that reads "Jordan Hale".

Jordan Hale
Assistant Attorney General
Open Records Division

JH/mcf

Ref: ID# 317163

Enc. Submitted documents

c: Mr. Neal Baltz
11203 Ranch Road 2222, #2101
Austin, Texas 78730
(w/o enclosures)