



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2008

Mr. W. Lee Auvenshine
Assistant Ellis County and District Attorney
Ellis County and District Attorney
1201 North Highway 77, Suite 104
Waxahachie, Texas 75165-7832

OR2008-10703

Dear Mr. Auvenshine:

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# 318228.

The Ellis County Sheriff's Department (the "sheriff") received a request for four specified incident reports. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the submitted information must be withheld in its entirety to protect the individual's privacy. In this instance, Case No. 07-06853 reveals that the

requestor knows the identity of the individual involved as well as the nature of the information contained in Case No. 07-06853. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the sheriff must withhold Case No. 07-06853 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.¹

Section 552.108(a)(2) of the Government Code 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. You state that Case Nos. 07-04310, 07-12002, and 07-14069 pertain to criminal investigations that concluded in results other than a conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to Case Nos. 07-04310, 07-12002, and 07-14069.

We note that section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88. Accordingly, with the exception of basic information, the sheriff may withhold Case Nos. 07-04310, 07-12002, and 07-14069 under section 552.108(a)(2) of the Government Code.² However, upon review we find that some of the basic information in Case Nos. 07-04310 and 07-12002 is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy.

As noted above, 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.*, 540 S.W.2d at 668, 685. The types 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. Accordingly, the sheriff must withhold the information we have marked in Case Nos. 07-04310 and 07-12002 under section 552.101 in conjunction with common-law privacy.

¹As our ruling is dispositive, we need not address your remaining argument against disclosure for this information.

²As our ruling is dispositive, we need not address your remaining argument against disclosure for this information.

In summary, the sheriff must withhold Case No. 07-06853 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the sheriff may withhold Case Nos. 07-04310, 07-12002, and 07-14069 under section 552.108(a)(2) of the Government Code. In releasing basic information, the sheriff must withhold the information we have marked Case Nos. 07-04310 and 07-12002 under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining basic information must be released to the requestor.

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).

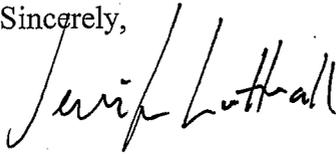
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 black ink that reads "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J" and "L".

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 318228

Enc. Submitted documents

c: Mr. Ramon O. Presas, III
2995 Knoxville Street
Dallas, Texas 75211
(w/o enclosures)