



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2008

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

OR2008-12387

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# 321153.

The Williamson County Sheriff's Office (the "sheriff") received a request for all records pertaining to 9-1-1 calls involving three named individuals for a specified period of time and for internal instructions to 9-1-1 operators pertaining to how interference with child custody calls related to the named individuals are to be handled. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the requestor excluded social security numbers, Texas driver's license numbers, Texas license plate numbers, and vehicle identification numbers from his request. Thus, these items are not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the sheriff need not release that information in response to this request.¹

¹As all of the information that would be excepted from disclosure under section 552.130 of the Government Code is not responsive to this request, we do not address your argument under section 552.130.

Section 552.101 of the Government Code exempts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. Section 552.101 of the Government Code encompasses section 261.201(a) of the Family Code, which 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, audiotapes, videotapes, 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). You claim that Exhibit B consists of reports that were used or developed in various investigations under chapter 261 of the Family Code. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Based on your representations and our review, we find that the reports in Exhibit B are within the scope of section 261.201 of the Family Code. You have not indicated that the sheriff has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, Exhibit B is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.² As our ruling is dispositive for the information in Exhibit B, we need not address your remaining argument against the disclosure of this information.

We now turn to your arguments for the remaining information. Section 552.108(a)(1) of the Government Code exempts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime.” A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See Gov’t Code*

²We note that if the Texas Department of Family and Protective Services has created files on these cases, the child’s parent, managing conservator, or legal representative may have the statutory right to review these files. *See Fam. Code § 261.201(g).*

§§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the report in Exhibit D relates to an active criminal investigation. Based on your representations and our review, we conclude that the release of Exhibit D would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to Exhibit D.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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 Exhibit C pertains to several closed investigations where either no arrests were made and no charges were filed or the statute of limitations has expired on the criminal offense. Therefore, we agree that section 552.108(a)(2) is applicable to Exhibit C.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Basic arrest information includes, among other things, the names of the investigating officers. *Houston Chronicle*, 531 S.W.2d at 185-87; *see also* Open Records Decision No. 127 at 4 (1976). You seek to withhold the names of investigating officers you have marked in the reports in Exhibits C, D, and E under section 552.108. Because the names of investigating officers are basic information, they may not be withheld under section 552.108. Gov't Code § 552.108(c). We will, however, consider your argument that the marked names of the officers in Exhibits C, D, and E are confidential pursuant to the "special circumstances" aspect of 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 of the Government Code 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. "Special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* After reviewing your arguments and the information in Exhibits C, D, and E, you have failed to demonstrate special circumstances sufficient to justify withholding the information you have marked from public disclosure on that basis. Thus, none of the information in Exhibits C, D, and E may be withheld based on "special circumstances." We therefore conclude that with the exception of basic information, the department may withhold Exhibit D under

section 552.108(a)(1) and Exhibit C under section 552.108(a)(2).³ The responsive information in Exhibit E must also be released to the requestor.

In summary, the department must withhold the reports in Exhibit B under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, which must be released, the department may withhold Exhibits C and D under section 552.108 of the Government Code. The responsive information in Exhibit E 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).

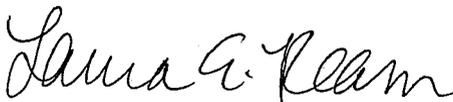
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

³We note that you have the discretion to release all or part of Exhibits C and D that is not otherwise confidential by law. Gov't Code § 552.007.

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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 321153

Enc. Submitted documents

c: Mr. Daniel Simon
5650 CR 200
Liberty Hill, Texas 78642
(w/o enclosures)