



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 2, 2009

Mr. Ramon Salinas, III  
Kenedy County Sheriff  
P.O. Box 10  
Sarita, Texas 78385

Mr. Tonnyre Thomas Joe  
Kenedy County Attorney  
P.O. Box 202  
Sarita, Texas 78385

OR2009-04353

Dear Mr. Salinas and Mr. Joe:

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# 339591.

The Kenedy County Sheriff's Office (the "sheriff") and the Kenedy County Attorney (the "county attorney") each received two requests for all information related to two cases involving the requestor's client. The requests received by the sheriff and the county attorney are identical and, although the sheriff and the county attorney (collectively "the county") have submitted separate briefs, each claims that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that, in his request, the requestor argues that he has a special right of access to certain information relating to his client under section 552.023 of the Government Code. Under section 552.023, a person's authorized representative has a special right of access to private information that would otherwise be excepted from public disclosure on the basis of privacy principles. *See Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individual requests information concerning herself or person for whom she is authorized representative). However, the county seeks to withhold the submitted information on the basis of certain exceptions that protect the interests of the county, not the privacy interests of the requestor's client. Thus, in this situation, the requestor does not have a right of access to the information at issue under section 552.023.

We next note that portions of the submitted information are subject to section 552.022 of the Government Code, which provides in relevant part:

[T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(3), (17). Accordingly, the county may withhold the information we have marked under sections 552.022(a)(3) and 552.022(a)(17) only if such information is "expressly confidential under other law." Although the county raises section 552.108 of the Government Code with regard to this information, this section is a discretionary exception to disclosure that protects the governmental body's interests and which may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). As such, section 552.108 is not "other law" that makes information confidential for the purposes of section 552.022. Therefore, the county must release the information we have marked pursuant to sections 552.022(a)(3) and 552.022(a)(17).

We next consider the county's arguments against disclosure of the remaining submitted information. Section 552.108(a)(2) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). 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). In this instance, the county informs us that the submitted information relates to a concluded criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree that section 552.108(a)(2) is generally applicable to the remaining submitted information.

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). Section 552.108(c) refers to the basic "front-page" information held to be public in *Houston Chronicle Publishing*

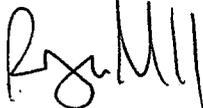
*Company v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, the county may withhold the remaining submitted information under section 552.108(a)(2), but must release basic information from each withheld report.

In summary, the county must release the information we have marked under sections 552.022(a)(3) and 552.022(a)(17) of the Government Code and basic information related to the underlying cases pursuant to section 552.108(c) of the Government Code. The county may withhold the remainder of the submitted information under section 552.108(a)(2) of the Government Code.<sup>1</sup>

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ryan T. Mitchell  
Assistant Attorney General  
Open Records Division

RTM/jb

Ref: ID# 339591

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.