



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 18, 2009

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

OR2009-13219

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# 355675.

The Williamson County Sheriff's Office (the "sheriff") received a request for two specified internal affairs investigation reports. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.137 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor has excluded social security numbers from her request. Accordingly, any social security numbers within the submitted documents are not responsive to the request for information. This ruling does not address the public availability of any

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<sup>1</sup>Although you raise section 552.1175 of the Government Code, we note that section 552.117 is the proper exception to claim for information relating to a former employee of the sheriff.

information that is not responsive to the request and the sheriff is not required to release that information in response to the request.

Next, you raise section 552.108 of the Government Code for a portion of the responsive submitted information. Section 552.108 provides in pertinent part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(2) 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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. 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 submitted information consists of two internal affairs investigation reports. Section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you state the internal affairs investigation involved a criminal investigation conducted by the sheriff that concluded with no arrests made and no charges pursued. Thus, you contend this investigation did not result in conviction or deferred adjudication. Based on your representations and our review, we find section 552.108(a)(2) is applicable to the information you have marked. Thus, the sheriff may withhold the information you have marked under section 552.108(a)(2) of the Government Code.<sup>2</sup>

You raise section 552.101 of the Government Code in conjunction with common-law privacy for a portion of the remaining information at issue. Section 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. Common-law privacy protects information that (1) contains highly

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<sup>2</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure.

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. Upon review, we agree that the information you have marked is confidential under common-law privacy and the sheriff must withhold it under section 552.101 of the Government Code.

You also claim portions of the remaining information at issue are subject to section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The sheriff may only withhold the marked information under section 552.117(a)(1) if the individual in question elected confidentiality under section 552.024 prior to the date on which the request for this information was made. If the former employee made a timely election under section 552.024, the sheriff must withhold the personal information under section 552.117(a)(1). If the former employee did not make a timely election under section 552.024, the marked information may not be withheld under section 552.117(a)(1) of the Government Code.

In summary, the sheriff may withhold the information you have marked under section 552.108(a)(2) of the Government Code. The sheriff must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the former employee whose information you have marked has made a timely election under section 552.024 of the Government Code, the sheriff must withhold the marked information under section 552.117(a)(1) of the Government Code. The remaining information must be released.

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Casterline", with a long horizontal line extending to the right.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/jb

Ref: ID# 355675

Enc. Submitted documents

c: Requestor  
(w/o enclosures)