



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 24, 2009

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

OR2009-13490

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# 356363.

The Williamson County Sheriff's Office (the "sheriff"), received a request for information relating to a specified incident. We note you have marked social security numbers under section 552.147 of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

Section 552.101 of the Government Code 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 section 261.201 of the Family Code. Section 261.201(a) provides:

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

²Although you assert other exceptions under the Act, we note that you have not provided arguments for these exceptions.

(a) [T]he 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.

Act of April 10, 1995, 74th Leg., R.S., ch. 20, § 1, sec. 261.201, 1995 Tex. Gen. Laws 113, 262, *amended by* Act of June 1, 2009, 81st Leg., R.S., ch. 779, §1, 2009 Tex. Sess. Law Serv. 1965, 1965-66 (Vernon) (to be codified as an amendment to Fam. Code § 261.201(a)).

Some of the information at issue involves a report of alleged or suspected abuse made to the Child Protective Services Division of the Texas Department of Family and Protective Services (the "DFPS"), as well as the identity of the person making the report. You do not inform us that the sheriff has adopted a rule that governs the release of this type of information. Therefore, this information, which we have marked, is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. However, the remaining information relates to an investigation of aggravated assault. Upon review, we find that you have not demonstrated that the remaining information was used or developed in an investigation of child abuse under chapter 261 of the Family Code. Therefore, the sheriff may not withhold any of the remaining information on this basis.

Section 552.101 also encompasses the common-law right to privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. You have marked the name and identification number of an undercover officer as confidential pursuant to common-law privacy and "special circumstances." You argue that release of this information "would likely cause the officer to face an 'imminent threat of physical danger,'" and, therefore special circumstances exist under common-law privacy to withhold the identity of this officer. However, the Third Court of Appeals recently ruled that the "special circumstances" exception found in past Attorney General Open Records Decisions directly

conflicts with Texas Supreme Court precedent regarding common-law privacy. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, No. 03-08-00516-CV, 2009 WL 1491880 (Tex. App.—Austin May 29, 2009, no pet. h.). The court of appeals ruled that the two-part test set out in *Industrial Foundation* is the “sole criteria” for determining whether information can be withheld under common-law privacy. *Id.*; see also *Indus. Found.*, 540 S.W.2d at 686. In this instance, the information at issue consists of an undercover officer’s name and identification number. Upon review, we find that the officer’s name and identification number are not intimate or embarrassing. As this information fails to meet the first prong of the *Industrial Foundation* test for privacy, we find that the information at issue is not confidential under common-law privacy and the sheriff may not withhold it under section 552.101.

The Eighty-first Legislature recently enacted section 552.151 of the Government Code which relates to a public employee’s or officer’s safety. This section provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Act of June 3, 2009, 81st Leg., R.S., ch. 283, § 4, 2009 Tex. Sess. Law Serv. 741, 742–43 (Vernon) (to be codified at Gov’t Code § 552.151). In this instance, you explain the release of the undercover officer’s name and identification number would likely cause the officer to face a threat of imminent physical danger. Based on your representations and our review, we find the sheriff has demonstrated release of the information at issue would subject the officer to a substantial threat of physical harm. Accordingly, the sheriff must withhold the name and identification number of the undercover officer you have marked under section 552.151 of the Government Code.

You contend that portions of the remaining information are also confidential under common-law privacy. 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. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683 (Tex. 1976). Upon review, we agree that the information you have marked, as well as the information we have marked, is intimate and embarrassing. We also find that this information is of no legitimate public interest. Therefore, the sheriff must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

You have marked Texas motor vehicle record information under section 552.130 of the Government Code. This section excepts from disclosure information that relates to a motor

vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1), (2). We agree the sheriff must withhold the information you have marked that relates to a Texas motor vehicle license, title, or registration pursuant to section 552.130.

In summary, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff must withhold the information you have marked under section 552.151 of the Government Code. The sheriff must withhold the information you have marked, and the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the information you have marked under section 552.130 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, 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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

Ref: ID# 356363

Enc. Submitted documents

c: Requestor
(w/o enclosures)