



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 20, 2010

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

OR2010-07319

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# 379912.

The Williamson County Sheriff's Office (the "sheriff") received a request for all incident reports during a specified time period regarding two specified addresses and all incident reports during the same time period regarding a named individual. You claim portions of the submitted incident reports are excepted from disclosure under sections 552.101, 552.108, and 552.151 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor has specifically excluded from his request all social security numbers, Texas driver's license numbers, Texas license plate numbers, and vehicle identification numbers. Thus, any such information is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (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. 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 established. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy

interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request requires the sheriff, in part, to compile unspecified law enforcement records concerning the individual named in the request, thus implicating the named individual's rights to privacy. Therefore, to the extent the sheriff maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.¹ We note you have submitted several reports that pertain to the named individual, but do not list the named individual as a suspect, arrestee, or criminal defendant. Thus, we will consider your claims under sections 552.101, 552.108, and 552.151 for these reports.

Section 552.101 also encompasses information other statutes make confidential, such as section 48.101 of the Human Resources Code, which provides in relevant part:

(a) The following information is confidential and not subject to disclosure under [the Act]:

(1) a report of abuse, neglect, or exploitation made under this chapter;

(2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by [the Texas Department of Family and Protective Services] or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101. Section 48.051 of the Human Resources Code provides that "a person having cause to believe that an elderly or disabled person is in the state of abuse, neglect, or exploitation" shall report certain prescribed information to the Texas Department of Family and Protective Services ("DFPS") or another appropriate state agency.² *See id.*

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

²*See* Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Gen. Laws 611, 641 ("A reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.").

§ 48.051(a). The only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are DFPS and certain other state agencies, depending on the circumstances surrounding the incident. *See id.* §§ 48.151, .152, .252, .301. Thus, reports made to a sheriff's office generally are not subject to section 48.101. You contend incident report numbers C07-12-6592 and C07-12-6591 are confidential under section 48.101. We note, however, these reports were created by the sheriff after receiving a report of alleged assault against an elderly person. Thus, you have failed to demonstrate the information you seek to withhold was investigated by an entity authorized to conduct such an investigation under chapter 48 of the Human Resources Code. Consequently, report numbers C07-12-6592 and C07-12-6591 may not be withheld under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.

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). 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 the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert report numbers C06-07-1932, C04-05-3486, C03-03-1417, C02-11-4755, C02-10-4104, C02-03-4646, and C02-02-5115 pertain to criminal investigations that did not result in convictions or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to these reports.

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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), and includes a detailed description of the offense and the names of the arresting officers. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). You assert the name and identification number of one of the investigating officers in report number C04-05-3486 is excepted under section 552.151 of the Government Code. We note, however, basic information does not include identifying information of investigating officers. In this instance, because the officer whose information you seek to withhold was an investigating officer, not an arresting officer, the officer's identifying information is not part of basic information. You also contend, however, a portion of the narrative in report number C06-07-1932 is protected by common-law privacy.

As previously noted, the Texas Supreme Court discussed the common-law privacy test requirements in the *Industrial Foundation* decision. 540 S.W.2d at 683-685. The type of information considered highly intimate or 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 find the information you have marked in report number C06-07-1932 is protected under common-law privacy. Therefore, the sheriff may not release the marked information as basic information. The remaining basic information must be released.

You also indicate report number C06-02-2843 should be withheld in its entirety on the basis of common-law privacy. Generally, only in certain instances, where it is demonstrated the requestor knows the identity of the individual at issue and the nature of the incident, do we require an entire report to be withheld to protect the individual's privacy. In this instance, you have not demonstrated, nor does the report reflect, the report involves a situation in which the entire report must be withheld on the basis of common-law privacy. However, we agree portions of the report, which we have marked, are highly intimate or embarrassing and not of legitimate public interest.

We further note portions of report numbers C07-12-6592 and C07-12-6591 may be protected by common-law privacy. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We find the medical information we have marked in report numbers C07-12-6592 and C07-12-6591 is highly intimate or embarrassing and not of legitimate public interest. Thus, the sheriff must withhold the information we have marked in report numbers C07-12-6592, C07-12-6591, and C06-02-2843 under section 552.101 of the Government Code in conjunction with common-law privacy.

You claim portions of report numbers C04-07-1869 and C03-06-1722 are excepted under section 552.151 of the Government Code, which 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.

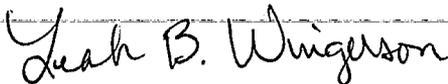
Gov't Code § 552.151. You seek to withhold the names and identification numbers of undercover officers you have marked in report numbers C04-07-1869 and C03-06-1722. You state the release of this information would cause the officers to face a substantial threat of physical harm. Therefore, we find the sheriff has demonstrated release of the undercover investigating officers' names and identification numbers would subject the officers to a substantial threat of physical harm. Accordingly, we conclude the sheriff must withhold the information you have marked in report numbers C04-07-1869 and C03-06-1722 under section 552.151 of the Government Code.

In summary, to the extent the sheriff maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the sheriff may withhold report numbers C06-07-1932, C04-05-3486, C03-03-1417, C02-11-4755, C02-10-4104, C02-03-4646, and C02-02-5115 under section 552.108(a)(2) of the Government Code. In releasing the basic information, the sheriff may not release from report number C06-07-1932 the information you have marked, which is protected under common-law privacy. Furthermore, the sheriff must withhold the information we have marked in report numbers C07-12-6592, C07-12-6591, and C06-02-2843 under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the marked information in report numbers C04-07-1869 and C03-06-1722 under section 552.151 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 379912

Enc. Submitted documents

c: Requestor
(w/o enclosures)