



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2010

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

OR2010-07883

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# 381052.

The Williamson County Sheriff's Office (the "sheriff") received a request for all information pertaining to a named individual in relation to occurrences where the sheriff responded to the requestor's residence. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor agreed to the redaction of social security numbers, driver's license and license plate numbers, and vehicle identification numbers. Therefore, such information is not responsive to the request. This ruling will not address non-responsive information and the sheriff need not release such information in response to the instant request.

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 common-law right of 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). The types of information considered 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 agree portions of case number C09-10-0365 are highly intimate or embarrassing and of no legitimate public interest. Accordingly, the sheriff must withhold the information we marked in case number C09-10-0365 pursuant to section 552.101 in conjunction with common-law privacy.

You raise section 552.108 of the Government Code for the remaining information. Subsections 552.108(a)(1) and 552.108(b)(1) provide:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming subsection 552.108(a)(1) or 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution. Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See Open Records Decision No. 562 at 10 (1990) (construing statutory*

predecessor). In addition, generally known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under law enforcement exception), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. *See* Open Records Decision No. 409 at 2 (1984) (construing statutory predecessor). You state case number 03-02-00133 contains an internal notation made by the sheriff for internal use and that its release would interfere with law enforcement and the detection, investigation, or prosecution of crime. However, you do not inform us case number 03-02-00133 pertains to an ongoing criminal investigation or prosecution, nor have you explained how the release of the internal notation would interfere in some way with the detection, investigation, or prosecution of crime. Thus, you have not met your burden under section 552.108(a)(1) or 552.108(b)(1). As you raise no further exceptions against disclosure of the internal notation, it must be released.

Section 552.108(a)(2) 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 . . . 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 claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *Id.*; *see id.* § 552.301(e)(1)(A). You inform us case numbers C09-09-08-5090, C09-02-5192, and C07-04-5403 pertain to closed investigations that did not result in convictions or deferred adjudications. Based on your representation, we agree section 552.108(a)(2) is generally applicable to these remaining reports.

Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Therefore, with the exception of basic information, the sheriff may withhold case numbers C09-08-5090, C09-02-5090, and C07-04-5403 under section 552.108(a)(2).¹

In summary, the sheriff must withhold the information we marked in case number C09-10-0365 under section 552.101 of the Government Code in conjunction with common-

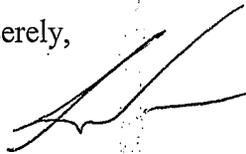
¹As our ruling is dispositive for this information, we need not address your argument under section 552.108(b)(2) against its release.

law privacy. Except for basic information, the sheriff may withhold case numbers C09-08-5090, C09-02-5090, and C07-04-5403 under section 552.108(a)(2) 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 381052

Enc. Submitted documents

c: Requestor
(w/o enclosures)