



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 17, 2010

Mr. Daniel Bradford
Assistant County Attorney
Travis County Attorney's Office
P.O. Box 1748
Austin, Texas 78767

OR2010-12463

Dear Mr. Bradford:

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# 389026.

The Travis County Sheriff's Office (the "sheriff") received a request for 9-1-1 calls pertaining to a family disturbance and officer-involved shooting at a specified address on May 31, 2009; audiotaped and videotaped police interviews with two named individuals; audio recordings, video recordings, and photographs of the scene and two named individuals that were collected during the investigation; and the entire internal affairs investigation report regarding the incident. You claim the submitted records are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(2) is not applicable to records of an internal affairs investigation that is purely administrative in nature and did not involve the criminal investigation or prosecution of an officer's alleged misconduct. *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied); *see City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.) (section 552.108 not applicable to information police department holds as employer). You assert the requested information relates to a criminal investigation that did not result in conviction or deferred adjudication. Upon review, we agree the 9-1-1 call recordings and radio traffic recording may be withheld under section 552.108(a)(2). The remaining submitted records, however, reflect they were generated as part of an internal administrative investigation conducted by the sheriff. You do not provide any arguments explaining how the internal investigation resulted in a criminal investigation or prosecution of a deputy's conduct. Accordingly, we find you have failed to demonstrate the applicability of section 552.108(a)(2) to any of the remaining submitted records and the sheriff may not withhold them based on that exception.

We note a small portion of the remaining information is protected from disclosure under section 552.101 of the Government Code in conjunction with the doctrine of common-law privacy.² 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. 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. *See id.* at 683. This office has also found that 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 (prescription drugs, illnesses, operations, and physical handicaps)*. We find the public has a legitimate interest in most of the remaining submitted records. We find, however, the name of a treating psychiatrist in the recorded interview is highly intimate or embarrassing and not of legitimate public concern.

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

Therefore, the sheriff must withhold the psychiatrist's name in the recorded interview under section 552.101 of the Government Code in conjunction with common-law privacy.

We further note the remaining submitted records contain Texas motor vehicle record information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). The sheriff must withhold the Texas license plate numbers and vehicle identification number we marked in the submitted report and indicated on the submitted photographs under section 552.130.³

In summary, the sheriff may withhold the 9-1-1 call recordings and radio traffic recording under section 552.108(a)(2) of the Government Code. The sheriff must withhold the psychiatrist's name in the recorded interview under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the Texas license plate numbers and vehicle identification number we marked in the submitted report and indicated on the submitted photographs under section 552.130. 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,



Jessica Eales
Assistant Attorney General
Open Records Division

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³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number and the portion of a photograph that reveals a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 389026

Enc. Submitted documents

c: Requestor
(w/o enclosures)