



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 17, 2011

Ms. Jeanette Kimball
Department of Records
Anderson County Sheriff's Office
1200 East Lacy
Palestine, Texas 75801

OR2011-06892

Dear Ms. Kimball:

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# 417967.

The Anderson County Sheriff's Office (the "sheriff") received a request for information related to case numbers 10-08119 and 10-08566, and a second request for case number 10-08119. You claim that the requested 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.

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 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).

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. 540 S.W.2d at 683. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No 393 at 2 (1983);

see Open Records Decision No. 339 (1982); see also *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

In this instance, the requestors know the identities of the alleged victims. Thus, withholding only identifying information from the requestors would not preserve the victims' common-law right to privacy. However, the first requestor is the authorized representative of the alleged victims. Under section 552.023 of the Government Code, "a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023; see also Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person for whom she is authorized representative). Thus, as the authorized representative of the alleged victims, the first requestor has a right of access to the submitted information which would otherwise be confidential under common-law privacy. Accordingly, the sheriff may not withhold the submitted information from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The second requestor, however, is not the authorized representative of the alleged victims; therefore, the sheriff must withhold case number 10-08119 in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy.¹

The sheriff also claims section 552.108 of the Government Code, which excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. See *id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You represent that the submitted information pertains to a pending criminal case. Based on your representation and our review, we find release of the submitted information would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976).

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88;

¹The remaining information is not responsive to the second request.

see also Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the sheriff may withhold the submitted information from the first requestor under section 552.108(a)(1) of the Government Code.

In summary, the sheriff must withhold case number 10-08119 in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, which must be released, the sheriff may withhold the submitted information from the first requestor under section 552.108(a)(1) of the Government Code.²

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 417967

Enc. Submitted documents

c: Requestors
(w/o enclosures)

²The records being released contain confidential information to which the first requestor has a right of access. *See* Gov't Code § 552.023. Thus, if the sheriff receives another request for this particular information from a different requestor, then the sheriff should again seek a decision from this office.