



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 11, 2011

Mr. Michael M. Kelley  
Assistant Criminal District Attorney  
Victoria County District Attorney  
205 North Bridge Street, Suite 301  
Victoria, Texas 77901

OR2011-14718

Dear Mr. Kelley:

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# 432711.

The Victoria County Sheriff's Office (the "sheriff") received a request for information pertaining to the arrest of a named individual in a specified case. You state the sheriff has released some information to the requestor. You claim the remaining 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 representative sample of information.<sup>1</sup>

We first address the sheriff's arguments under section 552.108(a) of the Government Code, as it is the most encompassing exception the sheriff raises. We understand you to assert that the information at issue is excepted under section 552.108 as interpreted by *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). In *Holmes*, the Texas Supreme Court held that the plain language of section 552.108 did not require a governmental body to show that release of the information would unduly interfere with law enforcement. *Id.* at 925. The *Holmes*

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<sup>1</sup>We assume the "representative sample" of information 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 those records contain substantially different types of information than those submitted to this office.

case further held that “section 552.108’s plain language makes no distinction between a prosecutor’s ‘open’ and ‘closed’ criminal litigation files” and concluded that the Harris County District Attorney may withhold his closed criminal litigation files under that exception. *Id.* Subsequent to the interpretation of section 552.108 in *Holmes*, the Seventy-fifth Legislature amended section 552.108 extensively. *See* Act of June 1, 1997, 75th Leg., R.S., ch. 1231, § 1, 1997 Tex. Gen. Laws 4697. As amended, section 552.108 now expressly requires a governmental body to explain, among other things, how release of the information would interfere with law enforcement. Accordingly, the court’s ruling in *Holmes*, which construed former section 552.108, is superseded by the amended section 552.108, which reads, in pertinent part, as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

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

(2) 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;

(3) it is information relating to a threat against a peace officer collected or disseminated under Section 411.048; or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov’t Code § 552.108(a). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The sheriff states a writ of habeas corpus has been filed in the specified case and that the requestor is pursuing other post-conviction remedies. However, we note that a habeas corpus proceeding is a civil proceeding. Therefore, the sheriff has not shown how a habeas corpus proceeding is a criminal prosecution for purposes of section 552.108(a)(1). Furthermore, we note a mere chance of an appeal is insufficient to demonstrate release of the submitted information will interfere with law enforcement efforts.

Thus, we find the sheriff has failed to demonstrate the applicability of section 552.108(a)(1) to the information at issue, and no information may be withheld on that basis.

A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation or prosecution that has concluded in a final result other than a conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). Our review of the information at issue reveals the prosecution of this matter concluded with a guilty plea by the named individual. Furthermore, you acknowledge this matter resulted in a conviction. Thus, we find the sheriff has failed to demonstrate the applicability of section 552.108(a)(2) to the information at issue. Section 552.108(a)(3) of the Government Code is also inapplicable, as the information at issue does not relate to a threat against a police officer. *See id.* § 552.108(a)(3).

Lastly, you do not assert that the information at issue was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. *See id.* § 552.108(a)(4). Therefore, the sheriff may not withhold any of the information at issue under section 552.108(a)(4).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (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. Although you claim some of the information at issue is protected by common-law privacy, we find you have failed to demonstrate how any of the information at issue is highly intimate or embarrassing and not of legitimate public interest. Therefore, none of the information at issue may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure “information [that] relates to (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country; [or] (2) a motor vehicle title or registration issued by an agency of this state or another state or country[.]”<sup>2</sup> Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov’t Code § 552.130(a)(1)-(2)). Upon review, we find the sheriff must withhold the information we have marked under section 552.130 of the

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

Government Code. As you raise no further exceptions to disclosure, the sheriff must release the remaining information at issue.<sup>3</sup>

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](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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/agn

Ref: ID# 432711

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note the remaining information at issue includes the requestor's client's Texas driver's license number, which the sheriff would ordinarily be required to withhold under section 552.130 of the Government Code, and the requestor's client's social security number, which the sheriff would ordinarily be able to withhold under section 552.147 of the Government Code. Because sections 552.130 and 552.147 protect personal privacy, the requestor has a special right of access to his client's Texas driver's license number and social security number. See Gov't Code § 552.023(a). However, section 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 under the Act. *Id.* § 552.147(b). Thus, if the sheriff receives another request for these same records from a person other than one with a right of access under section 552.023, the sheriff is authorized to withhold the requestor's client's social security number under section 552.147(b) without the necessity of requesting an attorney general decision