



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2011

Mr. C. R. Servise
Chief Deputy
Burnet County Sheriff's Office
P.O. Box 1249
Burnet, Texas 78611

OR2011-16137

Dear Mr. Servise:

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# 434974 (OR-0954).

The Burnet County Sheriff's Office (the "sheriff") received a request for information pertaining to a specified case number. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) 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] release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code §§ 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to an ongoing criminal case. Based on your representation and our review of the submitted information, we conclude that release of the information you have marked would

¹Although you raise section 552.101 of the Government Code in conjunction with section 552.130 of the Government Code, section 552.101 does not encompass other exceptions in the Act.

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 n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). We note, however, that the information you seek to withhold under section 552.108 includes a citation. Because a copy of the citation was provided to the individual who was cited, we find that release of the citation will not interfere with the detection, investigation, or prosecution of crime. Therefore, the sheriff may not withhold the citation, which we have marked, under section 552.108(a)(1).

We note 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; see also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information and the marked citation, the sheriff may withhold the information you have marked under section 552.108(a)(1).

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 common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. See *id.* at 681-82. 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. *Id.* at 683. 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. 343 (1982), 455 (1987). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. 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). Upon review, we have marked motor vehicle record information that is generally subject to section 552.130. However, section 552.130 protects privacy interests. Therefore, the requestor has a right of access to his client’s motor vehicle record information

under section 552.023 of the Government Code. Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds information is considered confidential under privacy principles). Accordingly, the sheriff must withhold the marked motor vehicle information not belonging to the requestor's client under section 552.130 of the Government Code.

You claim the sheriff lacks the technical capacity to redact the information at issue from the submitted audio and video recordings. We therefore conclude the sheriff must withhold the submitted video recordings in their entirety under section 552.130 of the Government Code. However, because the sheriff had the ability to copy the submitted audio recording in order to submit the requested information for our review, we believe the sheriff has the capacity to produce a copy of only the non-confidential portions of the information at issue. Therefore, we find the sheriff must withhold the information in the audio recording that does not pertain to the requestor's client we have indicated under section 552.130. The sheriff must release the remaining information in the audio recording to this requestor.

Section 552.147 of the Government Code provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. The sheriff may withhold the social security numbers in the remaining information under section 552.147.²

In summary, with the exception of basic information and the citation we have marked for release, the sheriff may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must also withhold the information we have marked in the submitted documents, the information in the audio recording we have indicated, and the video recordings in their entirety under section 552.130 of the Government Code. The sheriff may withhold social security numbers contained in the remaining information under section 552.147 of the Government Code. The remaining submitted information must be released.³

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.

²We note 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. Gov't Code § 552.147(b).

³In this instance, we note the requestor has a special right of access under section 552.023 of the Government Code to some of the information being released. Accordingly, if the sheriff should receive another request for this information from someone without such a right of access, the sheriff should again request an opinion from this office.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/ag

Ref: ID# 434974

Enc. Submitted documents

cc: Requestor
(w/o enclosures)