



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 15, 2011

Mr. Rodolfo Ramirez
Assistant District Attorney
Fort Bend County
301 Jackson, Room 101
Richmond, Texas 77469

OR2011-18447

Dear Mr. Ramirez:

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# 439823.

The Fort Bend County District Attorney's Office (the "district attorney") received a request for eleven categories of information pertaining to three specified cases. You state some information has been released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.130, 552.1325, 552.137, and 552.147 of the Government Code.¹ You also state you notified the City of Houston (the "city") of the request and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the city. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are

¹Although you also raise section 552.108 of the Government Code in conjunction with the doctrine of common-law privacy, we note section 552.108 does not encompass common-law privacy. As you have not provided any other arguments explaining the applicability of section 552.108, we will not address the applicability of this exception to the information at issue.

public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Id. § 552.022(a)(17). The submitted information includes court-filed documents. You seek to withhold the court-filed documents subject to section 552.022(a)(17) under section 552.103 of the Government Code. However, section 552.103 is discretionary and does not make information confidential under the Act. *See id.* § 552.103; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district attorney may not withhold the information subject to section 552.022(a)(17) under section 552.103. We note that information that is otherwise confidential under common-law privacy may not be withheld if it is contained in a court-filed document. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (sexual assault victim’s privacy right not violated by release of information in public court document). Accordingly, the district attorney may not withhold any portion of the court-filed documents under common-law privacy. However, sections 552.101, 552.130, 552.1325, and 552.137 of the Government Code make information confidential under chapter 552. *See Gov’t Code* §§ 552.101, 552.130, 552.1325, and 552.137 (providing for “confidentiality” of information). Thus, we will consider your claims under these exceptions for the information subject to section 552.022. We will also consider all claimed exceptions for the information not subject to section 552.022.

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. Section 552.101 encompasses information other statutes make confidential, such as section 261.201 of the Family Code. Section 261.201 provides, in relevant part:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You and the city argue some of the submitted information is confidential pursuant to section 261.201. Upon review, we find most of the submitted information pertains to investigations of alleged child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Therefore, except for the incident report we have marked in Exhibit K and the information we have marked in Exhibit J, the district attorney must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.²

Section 552.101 of the Government Code also encompasses the common-law right of 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 type 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. You also assert the incident report we have marked in Exhibit K contains information that is protected under common-law privacy. Upon review, we find that no portion of the information at issue is highly intimate or embarrassing and of no legitimate public interest. Thus, the district attorney may not withhold any of this information under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, we address your claim under section 552.103 of the Government Code for the information we have marked in Exhibits J and K. Section 552.103 provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated

²As our ruling is dispositive for this information, we do not address your remaining arguments against disclosure of this information.

on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception applies in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the requested information is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both parts of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

The purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. *See* Gov't Code § 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). You have provided information showing the requestor's client filed a complaint in federal court naming the Fort Bend County sheriff and some of its deputies as defendants. However, the district attorney is not a party to that litigation, and thus does not have a litigation interest in the matters for purposes of section 552.103. In such a situation, we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103. In this instance, you have not explained the district attorney represents the sheriff in the litigation at issue nor have you provided this office with a representation from the governmental body with the litigation interest that the governmental body wants to withhold the information at issue under section 552.103. Accordingly, the district attorney may not withhold any of the marked information in Exhibits J and K under section 552.103 of the Government Code. As you raise no other exceptions against the disclosure of the information we have marked in Exhibits J and K, it must be released.

In summary, except for the incident report we have marked in Exhibit K and the information we have marked in Exhibit J, which must be released, the district attorney must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.³

³We note the requestor has a right of access under section 552.023 of the Government Code to some of the information being released. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). Therefore, if the district attorney receives another request for this information from an individual other than this requestor, the district attorney must again seek a ruling from this office.

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/agn

Ref: ID# 429823

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Ms. Tiffany Evans
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P.O. Box 368
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(w/o enclosures)