



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 22, 2012

Chief James S. Kelley
Sweetwater Police Department
City of Sweetwater
P.O. Box 450
Sweetwater, Texas 79556

OR2012-02766

Dear Chief 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# 446296.

The Sweetwater Police Department (the "department") received a request for all calls for service for a specified address for a specified time period. You claim that the submitted 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.

Initially, we note you have submitted calls for service that occurred before the specified time period. This information, which we have marked, is not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the department need not release such information in response to this request.

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 the common-law right of 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). To demonstrate the applicability of common-law privacy, both prongs of this

test must be established. *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. *Id.* at 683. This office has 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 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find portions of the information would ordinarily be highly intimate or embarrassing and not of legitimate concern. In this instance, however, this information does not identify any individual to whom the information might pertain. As such, none of this information implicates the privacy rights of an identified individual. Furthermore, we find you have failed to demonstrate that any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold any of the responsive information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.103 of the Government Code provides, in pertinent part:

(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[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(c) This section does not except [from public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108(a)(1), (b)(2), (c). We note that the protections provided by subsections 552.108(a)(1) and 552.108(b)(2) are mutually exclusive of each other. Subsection 552.108(a)(1) generally applies to information that pertains to criminal investigations or prosecutions that are currently pending, while subsection 552.108(b)(2) is applicable to information relating to a criminal investigation or prosecution that concluded in a final result other than a conviction or deferred adjudication. A governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state call sheet 10-00896 pertains to a criminal case that was filed in municipal court, but the department does not currently know the disposition of the case. Furthermore, we note call sheet 10-00896 reflects the arrestee involved in the incident was convicted. As such, we find you have failed to demonstrate the applicability of subsection 552.108(a)(1) or subsection 552.108(b)(2) to incident report 10-00896; therefore, incident report 10-00896 may not be withheld on either of these bases. You state call sheet 11-01117 pertains to a criminal case that is pending investigation by the department. Based on your representation and our review, we conclude that release of call sheet 11-01117 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 n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is generally applicable to call sheet 11-01117.

As you acknowledge, 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). In Open Records Decision No. 649 (1996), this office concluded information contained in a computer-aided dispatch report is substantially the same as basic information and, thus, is not excepted from public disclosure under section 552.108. *See* ORD 649 at 3; *see also* Open Records Decision No. 394 at 3 (1983) (no qualitative difference between information contained in police radio cards or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*). Thus, with the exception of the basic front page offense and arrest information, which the department must release, the department may withhold call sheet 11-01117 under section 552.108(a)(1) of the Government Code.

We note portions of the remaining responsive information are subject to section 552.130 of the Government Code.¹ Section 552.130 provides information relating to a motor vehicle

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

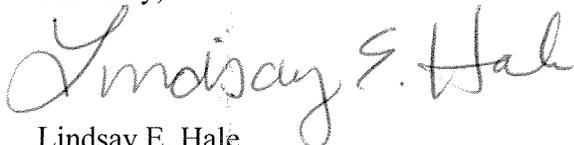
operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country or a local agency authorized to issue an identification document is excepted from public release. Gov't Code § 552.130(a). We conclude the department must withhold the information we have marked under section 552.130 of the Government Code.

In summary, with the exception of the basic information, the department may withhold call sheet 11-01117 under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked under section 552.130 of the Government Code. The department must release the remaining responsive information.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 446296

Enc. Submitted documents

c: Requestor
(w/o enclosures)