



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 20, 2012

Ms. Myra K. Morris
Royston, Rayzor, Vickery & Williams, L.L.P.
1300 Frost Bank Building
802 North Carancahua
Corpus Christi, Texas 78401-0021

OR2012-04090

Dear Ms. Morris:

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# 448072 (File No. 46,769).

The Jim Wells County Sheriff's Office (the "sheriff's office"), which you represent, received a request for a recurring daily or weekly report containing each arrestee's name, charges, date of arrest, and mugshots, including a report for a specified time period.¹ You claim the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note most of the submitted information is not responsive to the instant request for information. The requestor only asks for the name, charges, arrest date, and mugshots of arrestees. Accordingly, only the arrestee's name, charges, arrest date, and mugshots are responsive to this request. This ruling does not address the public availability of

¹You inform us the sheriff's office sought and received clarification regarding the scope of the request. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²We assume that the "representative sample" of records 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 that those records contain substantially different types of information than that submitted to this office.

nonresponsive information, and the sheriff's office is not required to release nonresponsive information in response to this request.³

Next, we note that a governmental body need not honor a standing request. A "standing request" refers to a request to provide information "on a periodic basis," *see* Open Records Decision No. 465 (1987); a weekly basis, *see* Open Records Decision No. 476 (1987); or to provide information that has not yet been recorded, *see* Open Records Decision No. 452 (1986). Therefore, the Act does not require the sheriff's office to comply with the request that information be provided on a daily or weekly basis. However, we will consider your arguments for the responsive information at issue pertaining to the specified time period.

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 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681–82. 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. Upon review, we find you have failed to demonstrate how any of the responsive information at issue is highly intimate or embarrassing and not of legitimate public interest. Therefore, the sheriff's office may not withhold any of the responsive information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108 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; [or]

(2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

³As we are able to make this determination, we need not address your arguments against disclosure of the nonresponsive information.

Gov't Code § 552.108(a)(1)-(2). Generally speaking, subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the responsive information at issue pertains to a closed criminal investigation that did not result in a conviction or a deferred adjudication, so as to be excepted from disclosure under section 552.108(a)(2). However, you also state the responsive information at issue pertains to an active criminal investigation, and that the release of the responsive information at issue would interfere with the detection, investigation, or prosecution of crime. Because you have provided this office with contradictory representations, we find you have failed to demonstrate the applicability of section 552.108. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Therefore, we conclude the sheriff's office may not withhold the responsive information at issue under either subsection 552.108(a)(1) or subsection 552.108(a)(2) of the Government Code. As you raise no further exceptions to disclosure, the sheriff's office must release the responsive information at issue.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/ag

Ref: ID# 448072

Enc. Submitted documents

c: Requestor
(w/o enclosures)