



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2012

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2012-06907

Dear Ms. Lentz:

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# 453398.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specific case number. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130 and 552.152 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor does not seek access to any social security or Texas driver's license, license plate or vehicle identification numbers contained in the submitted information. Thus, those types of information are not responsive to the request. This ruling does not address the public availability of any of information that is not responsive to the request, and the sheriff's office need not release any such information in response to this request. Therefore, we need not address the sheriff's office's claim for Texas driver's license and motor vehicle information under section 552.130 of the Government Code.

Section 552.101 of the Government Code encompasses "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," Gov't Code

¹Although you claim section 552.151 of the Government Code for the information at issue, we note the 82nd Texas Legislature renumbered section 552.151 as section 552.152 of the Government Code. *See Act of May 9, 2011, 82nd Leg., R.S., S.B. 1303, § 27.001(20).*

§ 552.101. This section 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 satisfied. *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. Upon review, we agree some of the submitted information is highly intimate or embarrassing and not of legitimate public concern. Thus, the sheriff's office must withhold the information we have indicated on the submitted audio recording and the information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses section 411.153 of the Government Code.² Section 411.153 provides:

- (a) A DNA record stored in the DNA database is confidential and is not subject to disclosure under the public information law, Chapter 552.
- (b) A person commits an offense if the person knowingly discloses to an unauthorized recipient information in a DNA record or information related to a DNA analysis of a sample collected under this subchapter.
- (c) An offense under this section is a state jail felony.
- (d) A violation under this section constitutes official misconduct.

Gov't Code § 411.153. A "DNA record" means the results of a forensic DNA analysis performed by a DNA laboratory. *See id.* § 411.141(6), (7). "Forensic analysis" is defined as "a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action." *See* Crim. Proc. Code art. 38.35(4); *see also* Gov't Code § 411.141(10) (providing that "forensic analysis" has meaning assigned by Crim. Proc. Code art. 38.35). A "DNA database" means "one or more databases that contain forensic DNA records maintained by the director [of the Department of Public Safety ("DPS)]." Gov't Code § 411.141(5); *see id.* § 411.001(3).

²The 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).

The director of DPS is required to establish certain procedures for DNA laboratories. *See id.* §§ 411.144(a), .142(h) (requiring director to establish standards for DNA analysis). Section 411.144 of the Government Code provides that a DNA laboratory conducting a forensic DNA analysis under subchapter G of chapter 411 shall comply with subchapter G and the rules adopted under subchapter G. *See id.* § 411.144(d); 37 T.A.C § 28.82(a). The director of DPS has adopted rules that govern the regulation of forensic DNA laboratories in this state. *See* 37 T.A.C. §§ 28.81, .82 (describing minimum standards by which a forensic DNA laboratory must abide); *see also* Gov't Code § 411.147(b). The director of DPS may release a DNA record in certain instances, including to a criminal justice agency for criminal justice or law enforcement purposes. *See id.* § 411.147(c).

In this instance, some of the remaining information consists of DNA records relating to DNA analyses of samples collected under subchapter G of chapter 411 of the Government Code. The information in question is contained in the sheriff's office's file related to a criminal case. The information we have marked appears to be the result of forensic DNA analyses performed by a DNA laboratory in accordance with DPS regulations. Thus, we conclude the sheriff's office must withhold the DNA records we have marked under section 552.101 of the Government Code in conjunction with section 411.153 of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n 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 . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state the submitted information contains a recording taken inside the Williamson County Jail. You explain that release of the recording at issue would interfere with law enforcement activities and provide the public the layout of the secured areas of the jail. You contend that releasing the information at issue would jeopardize the safety and security of the jail and would interfere with law enforcement and crime prevention. Based on your arguments and our review, we find the release of the information you have marked under 552.108(b)(1) would interfere with law enforcement. Therefore, the sheriff's office may withhold the information you have marked under section 552.108(b)(1) of the Government Code.³

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.⁴ *See* Gov't Code § 552.1175(a)(1); *see also* Crim. Pro. Code art. 2.12 (defining "peace officer"). To the extent the individual whose information we have indicated is a currently licensed peace officer who elects to restrict access to the information pertaining to him in accordance with section 552.1175(b), the sheriff's office must withhold this information under section 552.1175 of the Government Code. However, the sheriff's office may not withhold this information if the individual at issue is not a currently licensed peace officer or no election is made.

Section 552.152 of the Government Code provides as follows:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You have marked the information the sheriff's office seeks to withhold under section 552.152. You state the marked information identifies a deputy of the sheriff's office who was working undercover. You seek to withhold the deputy's name from the submitted information. You contend release of the deputy's identity would not only compromise his effectiveness as an undercover officer but also would expose him to a substantial threat of being physically harmed by suspects and persons he has assisted in arresting or convicting. Based on your representations and our review, we conclude the

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁴The 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).

sheriff's office must withhold the information you have marked under section 552.152 of the Government Code.

In summary, the sheriff's office must withhold the information we have indicated and marked under section 552.101 in conjunction with common-law privacy. The sheriff's office must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.153 of the Government Code. The sheriff's office may withhold the information it has marked under section 552.108(b)(1) of the Government Code. To the extent the individual whose information we have indicated is currently a licensed peace officer who elects to restrict access to the information pertaining to him in accordance with section 552.1175(b), the sheriff's office must withhold this information under section 552.1175 of the Government Code. The sheriff's office must withhold the information you have marked under section 552.152 of the Government Code. The remaining information must be released.

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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 453398

Enc. Submitted documents

c: Requestor
(w/o enclosures)