



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2012

Ms. D. Armstrong
Administrative Assistant
Criminal Division
Hood County Sheriff's Office
400 Deputy Larry Miller Drive
Granbury, Texas 76048

OR2012-11467

Dear Ms. Armstrong:

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# 459843.

The Hood County Sheriff's Office (the "sheriff's office") received a request for specified information pertaining to the Animal Control Department, including audits, training manuals, policies and procedures, citations, adoption contracts, and activity reports. You state the sheriff's office does not have any information responsive to the request for audits.¹ You claim some of the requested information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We

¹We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

²We assume 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.

have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address your statement that some of the requested information is available on the website for Hood County (the "county"). We note section 552.228 of the Government Code requires a governmental body to provide a requestor with a "suitable copy" of requested public information. *Id.* § 552.228(a). We also note "[a] public information officer does not fulfill his or her duty under the Act by simply referring a requestor to a governmental body's website for requested public information." Open Records Decision No. 682 at 7 (2005). Instead, section 552.221 of the Government Code requires a governmental body "to either provide the information for inspection or duplication in its offices or to send copies of the information by first class United States mail." *Id.*; *see* Gov't Code § 552.221(b). Thus, the sheriff's office must provide access to or copies of the responsive information you state is on the county's website to the requestor. However, we note a requestor may agree to accept information on a governmental body's website in fulfillment of a request for information under the Act. *See* ORD 682 at 7.

Next, we address your argument under section 552.108 of the Government, as it is potentially the most encompassing. Section 552.108(a)(1) 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted animal cruelty case pertains to a pending investigation. Based upon this representation and our review, we conclude release of the information pertaining to the animal cruelty case, which we have marked, 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). Accordingly, we conclude section 552.108(a)(1) of the Government Code is generally applicable to the information we have marked. You also seek to withhold under section 552.108 information pertaining to "cases as well as any citations that have been issued, that the release or inspection of such would interfere with the investigation of these cases." You explain a case is filed with the justice of the peace for citations involving fines. However, you have submitted multiple citations and have not identified which citations, if any, pertain to pending criminal investigations or prosecutions. Consequently, we find you have not demonstrated the applicability of section 552.108(a)(1) to any of the remaining information. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Thus, the sheriff's office

may not withhold any of the remaining information under section 552.108(a)(1) of the Government Code.

We note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the sheriff's office may withhold the information we have marked from disclosure 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."³ Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 826.0211 of the Health and Safety Code provides in part:

(a) Information contained in a rabies vaccination certificate or in any record compiled from the information contained in one or more certificates that identifies or tends to identify an owner or an address, telephone number, or other personally identifying information of an owner of a vaccinated animal is confidential and not subject to disclosure under Chapter 552, Government Code. The information contained in the certificate or record may not include the social security number or the driver's license number of the owner of the vaccinated animal.

Health & Safety Code § 826.0211(a). We note section 826.0211 is applicable only to information contained in a rabies vaccination certificate or in a record compiled from information contained in one or more rabies vaccination certificates. The submitted information contains a rabies certificate. Therefore, the identifying information within the rabies certificate we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 826.0211 of the Health and Safety Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (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). 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

³The 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).

disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff's office must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* Gov't Code § 552.130(a)(1)-(2). Upon review, we find the sheriff's office must withhold the marked motor vehicle record information under section 552.130 of the Government Code.

Next, we understand you seek to withhold portions of the remaining information under section 552.147 of the Government Code. This section provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.⁴ *Id.* § 552.147(a). Accordingly, the sheriff's office may withhold the submitted social security numbers under section 552.147 of the Government Code.

In summary, with the exception of basic information, the sheriff's office may withhold the information we have marked under section 552.108(a)(1) of the Government Code. The sheriff's office must withhold the information we have marked in the submitted rabies certificate under section 552.101 of the Government Code in conjunction with section 826.0211 of the Health and Safety Code. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the information we have marked under section 552.130 of the Government Code. The sheriff's office may withhold the submitted social security numbers under section 552.147 of the Government Code. The remaining information must be released.

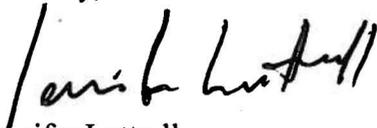
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

⁴We 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).

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 459843

Enc. Submitted documents

c: Requestor
(w/o enclosures)