



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 16, 2013

Mr. Dallas W. Tharpe  
Assistant Criminal District Attorney  
Smith County  
100 North Broadway, 4th Floor  
Tyler, Texas 75702

OR2013-06177

Dear Mr. Tharpe:

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# 484300.

The Smith County Sheriff's Office (the "sheriff's office") received a request for documents filed by a named individual. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code 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 claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state "[a]t least

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<sup>1</sup>Although you also raise sections 552.101 and 552.1175 of the Government Code, you have not submitted any arguments explaining how these exceptions apply to the submitted information. Therefore, we assume you have withdrawn your claims under these exceptions. *See* Gov't Code §§ 552.301, .302.

one of the documents that would be relevant to [the request at issue] involves a case that is still within the applicable statute of limitations for the prosecution of any offense and at least one case is currently pending before the County Court at Law of Smith County, Texas[.]” You also state “investigations are still ongoing relating to the case(s)[.]” However, you have submitted ten reports, and you have not identified which reports are related to pending criminal investigations or prosecutions. Consequently, we find you have not demonstrated the applicability of section 552.108(a)(1) to the information at issue. *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 information at issue under section 552.108 of the Government Code.

Section 552.103 of the Government Code 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 on the date that the requestor applies to the officer for public information for access to or duplication of the information.

*Id.* § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception applies in a particular situation. The test for meeting this burden is a showing that (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.

You argue the submitted information is excepted under section 552.103 because “litigation involving [the requestor] is currently pending where the State of Texas is a party[,] and the information [requested] is likely to be used in such prosecution.” As noted above, you have submitted multiple reports and have not identified which report or reports pertain to a pending prosecution. Further, you do not explain how the sheriff’s office will be, or is, a party to any criminal prosecution of this case. *See* Gov’t Code § 552.103(a); Open Records

Decision No. 575 at 2 (1990). In such a situation, we require an affirmative representation from the governmental body with the litigation interest, such as a district attorney or local prosecutor, requesting to withhold the information from disclosure under section 552.103. Because you have not provided such a representation, the sheriff's office may not withhold any of the submitted information under section 552.103.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>2</sup> 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.

Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* ORDs 393, 339; *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victim of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information); ORD 440 (detailed descriptions of serious sexual offenses must be withheld). In this instance, one the submitted reports pertains to an alleged sexual assault. Additionally, the requestor knows the identity of the alleged sexual assault victim. Thus, withholding only the victim's identifying information from this requestor would not preserve the victim's common-law right to privacy. Accordingly, to protect the victim's privacy, the department must withhold the report we have marked in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license issued by a Texas agency, or an agency of another state or country, is excepted from public release. Gov't Code § 552.130(a)(1). Upon review, we find

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions 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 sheriff's office must withhold the driver's license information we have marked in the remaining information under section 552.130 of the Government Code.

In summary, 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 and section 552.130 of the Government Code. The remaining information must be released.<sup>3</sup>

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](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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

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<sup>3</sup>We note the remaining information includes the requestor's driver's license information, which is excepted from public disclosure under section 552.130 of the Government Code, and the requestor's social security number, which is excepted under section 552.147 of the Government Code. Because these exceptions protect privacy, the requestor has a right of access to his driver's license information and social security number under section 552.023 of the Government Code. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). The sheriff's office is now authorized to redact driver's license information under section 552.130(c) without the necessity of requesting a decision under the Act. *See* Gov't Code § 552.130(c)-(e). Further, section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without requesting a decision. Thus, should the sheriff's office receive another request for the submitted information from a different requestor, the sheriff's office is authorized to withhold the requestor's driver's license information and social security number without requesting another ruling. We further note the sheriff's office is authorized to withhold the social security number not belonging to the requestor in the remaining information. *See id.* § 552.147(b).

Ref: ID# 484300

Enc. Submitted documents

c: Requestor  
(w/o enclosures)