



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 3, 1997

Mr. Kevin D. Pagan  
Assistant City Attorney  
City of McAllen  
P.O. Box 220  
McAllen, Texas 78505-0220

OR97-0686

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 104839.

The City of McAllen (the "city") received several open records requests from two individuals for unrelated records. The first two requests seek all police department records pertaining to two named individuals in which those individuals are identified as either the complainant or defendant. You contend that, except for the "front page offense report information," which you indicate will be released to the requestor, the records at issue are excepted from required public disclosure pursuant to section 552.108 of the Government Code. You also suggest in your correspondence with the requestor that section 552.101 of the Government Code may apply to some of the requested information.

Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law and constitutional right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We note that to the extent that the requestor is asking for all records in which the named individuals are identified as "suspects," the requestor, in essence, is asking that the city compile those individuals' criminal histories. We caution that the city's compiling and subsequent release of an individual's criminal history may result in the violation of that

individual's privacy interests. See *United States Dep't of Justice v. Reporters Committee For Freedom of the Press*, 489 U.S. 749 (1989). The city therefore must withhold pursuant to section 552.101 all compilations of the referenced individuals' criminal histories.<sup>1</sup>

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[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." Gov't Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Because the police reports clearly come within the purview of section 552.108, we conclude that most of the information at issue may be withheld under this section.

We note, however, that information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No.127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Although section 552.108 authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. See Gov't Code § 552.007.

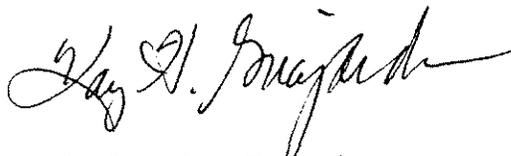
With regard to the remaining open records request from Advantage Records, we note that the city received a subpoena duces tecum for all of the city police department records pertaining to a named individual. Although you have treated the subpoena as a request under the Texas Open Records Act, it is clear to this office that the requested information is not being sought pursuant to the Open Records Act, but rather pursuant to the Texas Rules of Civil Procedure. Consequently, the appropriate forum to determine whether the information must be released is the authority that issued the subpoena. See also Gov't Code § 552.005. This office therefore declines to issue an open records ruling regarding these particular records.

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<sup>1</sup>We note, however, that there is no prohibition of the release of "criminal history record information" pertaining to pending criminal actions. Cf. Gov't Code § 411.081(b) (authorizing release of CHRI "that is related to the offense for which a person is involved in the criminal justice system") (emphasis added); 28 C.F.R. § 20.20(c) (same).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hamilton Guajardo  
Assistant Attorney General  
Open Records Division

KHG/RWP/rho

Ref.: ID# 104839

Enclosures: Submitted documents

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