



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 27, 1997

Ms. Stephanie F. Lippard
Fielding, Barrett & Taylor, L.L.P.
3400 Bank One Tower
500 Throckmorton Street
Fort Worth, Texas 76102-3821

OR97-1904

Dear Ms. Lippard:

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# 108165.

The City of Burleson (the "city") received a request for all calls for service by the police department at 1009 Mitchell Lane, Burleson, all crime or incident reports at the same location, and all arrest reports for Michael Devon Cook and for Toni D. Whitley. You state that pages 1.01 and 2.01 of the offense report have been released to the requestor, but assert that the remaining information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered your arguments and have reviewed the information submitted.

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 records at issue 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, including a detailed description of the offense, 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.

In this regard, we note that the requestor asks for "all arrest reports" for two named individuals. 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. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See* Open Records Decision Nos. 616 (1993), 565 (1990). The city, therefore, must withhold all compilations of the referenced individuals' criminal histories pursuant to section 552.101.¹

We note, however, that the federal regulations referenced in *Reporter's Committee* which govern the release of criminal history information provide that "[n]othing in these regulations prevents a criminal justice agency from disclosing to the public criminal history record information related to the offense for which an individual is currently within the criminal justice system." 28 C.F.R. § 20.20(c); *see also* Gov't Code § 411.081(b) (similar provision under Texas law governing release of criminal history information that law enforcement agencies obtain from the Texas Department of Public Safety or other state law enforcement agencies). Thus, we do not believe that the common-law right to privacy extends to criminal history information related to an offense for which an individual is currently within the criminal justice system.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

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¹Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision and incorporates the doctrine of common-law privacy.

Ref.: ID# 108165

Enclosures: Submitted documents

cc: Mr. Cecil Mixon
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(w/o enclosures)

