



Office of the Attorney General  
State of Texas

January 5, 1998

DAN MORALES  
ATTORNEY GENERAL

Captain Robert Taylor  
Amarillo Police Department  
City of Amarillo  
200 E. 3<sup>rd</sup>  
Amarillo, Texas 79101-1514

OR98-0011

Dear Captain Taylor:

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# 111336.

The Amarillo Police Department (the "department") received open records requests for all of the department's records in which a certain named individual is identified as either a suspect, witness, or complainant. You contend the requested records are excepted from required public disclosure by sections 552.101 and 552.108(a) of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common-law right of privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We note at the outset that to the extent the requestor is asking for any unspecified records in which the named individual is identified as a "suspect," the requestor, in essence, is asking that the department compile that individual's criminal history. 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 department, therefore, must withhold all compilations of the referenced individual's criminal history pursuant to section 552.101.

We now address whether the department may withhold the remaining requested information, if any, pursuant to section 552.108(a) of the Government Code. Section 552.108(a) of the Government Code, as amended by the Seventh-fifth Legislature, excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

You assert that the records at issue are excepted from disclosure "because the reports have not been adjudicated and therefore has not resulted in a conviction or deferred adjudication against any person."

Generally, a governmental body claiming an exception from disclosure under section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have not stated that the requested information pertains to an ongoing criminal investigation or prosecution nor have you explained how its release would interfere in some way with the detection, investigation, or prosecution of crime.

A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. It is not clear to this office, nor have you explained, how or if the investigation actually concluded.

You do not assert that the information at issue was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. Thus, section 552.108(a)(3) is inapplicable to the documents at issue. Since you have not shown the applicability of section 552.108 to the records at issue, the department must release the information to the requestor, with the following exceptions.

We note, however, that the Seventy-fifth Legislature amended the Open Records Act by adding section 552.130, which provides in relevant part as follows:

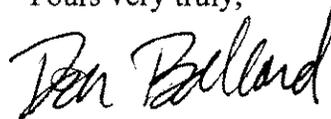
(a) Information is excepted from [required public disclosure] if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

The records at issue contain drivers license and license plate number information that are made confidential under section 552.130. The department must withhold these types of information pursuant to section 552.130.

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,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/RWP/ch

Re : ID# 111336

Enclosures: Submitted documents

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