



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 9, 1998

Ms. Lan P. Nguyen  
Assistant City Attorney  
Legal Department  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR98-0393

Dear Ms. Nguyen:

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# 113327.

The Houston Police Department (the "department") received a request for all files, records and any other documents concerning Joseph Roland Lave, as well as the personnel files of Mark Lavar. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, regarding the requested personnel file, you advise this office that "there exists no record of such officer on file." Chapter 552 of the Government Code applies only to information in existence and does not require a governmental body to prepare new information. Open Records Decision Nos. 605 (1992), 572 (1990), 430 (1985). Therefore, based upon your representations to this office, we find that the department need not respond to this part of the request.

Section 552.101 excepts from required public disclosure information that is confidential by law, and encompasses information protected under common-law privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). To the extent that the requestor is asking for *all* 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 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

VDP/glg

Ref.: ID# 113327

Enclosures: Submitted documents

cc: Mr. Joseph F. Zellmer  
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Denton, Texas 76201  
(w/o enclosures)