



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 25, 1998

Mr. John Steiner  
Division Chief  
City of Austin  
Law Department  
P.O. Box 1546  
Austin, Texas 78767-1546

OR98-0534

Dear Mr. Steiner:

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# 113165.

The Austin Police Department (the "department") received a request for "any and all incident/offense reports or other public documents" concerning a named individual. You state that the "first page" information has been released, as well as two incident reports. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 provides that

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [public disclosure] 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.

(b) An 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 is excepted from [public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(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.

(c) This section does not except from the requirements of [s]ection 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You have not explained how release of the requested information would interfere with the detection, investigation, or prosecution of crime or with law enforcement or prosecution. Nor have you demonstrated that any other provision of section 552.108 is applicable to the requested records. Therefore, you may not withhold any of the requested information from disclosure under section 552.108.

Section 552.101 excepts from required public disclosure information that is confidential by law, and encompasses information protected under common-law 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). 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 observe that some of the submitted information, such as the Certificate of Magistrate, appears to have been filed with a court. Information contained in public court records may not be withheld from the public pursuant to any of the Open Records Act's exceptions. *Cf. Star Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (information contained in public court records not protected by common-law privacy). The department must, therefore, release those documents at issue which have been filed with a court.

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/rho

Ref.: ID# 113165

Enclosures: Submitted documents

cc: Mr. J. Neil Hartley  
1509 Larkwood  
Austin, Texas 78723  
(w/o enclosures)