



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 7, 1998

Mr. Saul Pedregon
Assistant City Attorney
Criminal Law and Police Division
2014 Main, Room 206
Dallas, Texas 75201

OR98-0901

Dear Mr. Pedregon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 114161.

The Dallas Police Department (the "department") received a request for incident and arrest reports relating to a named individual. The requestor also seeks all records relating to 911 calls made from 5627 Willis Avenue, Dallas, Texas. You contend that two offense reports are excepted from disclosure by section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue. Because you do not indicate that you seek to withhold the information concerning the 911 call, we presume that this information has been released to the requestor.

Although you have not raised section 552.101 of the Government Code, the Office of the Attorney General will raise section 552.101 on behalf of a governmental body when necessary to protect third-party interests. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). 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). The requestor is asking for any unspecified records in which the named individual is identified. The requestor is, in essence, asking that the department to compile this 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 histories pursuant to section 552.101.

As for the requested information that does not implicate a right of privacy, offense report numbers 0034351-F and 0034528-F, we will consider your argument under section 552.108. Section 552.108 of the Government Code provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 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;

(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 the requirements of Section 552.021 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;

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

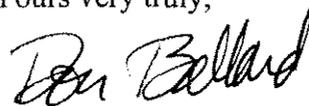
(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 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. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Neither, you nor the letter from the Dallas County District Attorney's Office, which asks that the information be withheld, articulates the current status of the cases. You do not affirmatively indicate that the specific offense reports at issue are currently being investigated or are pending trial. Nevertheless, we surmise from your arguments and the language of submitted letter that both cases are currently pending prosecution. If this presumption is correct, we believe that you have shown that release of the requested reports would interfere with the detection, investigation or prosecution of crime, and may be withheld under section 552.108(a)(1). *See* Open Records Decision No. 216 (1978).

We note, however, that information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publ'g 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 type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Gov't Code § 552.108(c); *see* Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

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

Ref: ID# 114161

Enclosures: Submitted documents

cc: Mr. Kenneth D. Monigold
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(w/o enclosures)