

January 20, 1999

Captain Robert Taylor
Amarillo Police Department
200 S E 3rd
Amarillo Texas 79101-1515

OR99-0137



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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Dear Captain Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 121657.

The City of Amarillo Police Department (the "city") received a request for "any and all records pertaining to and/or naming TOMMY SHANE PASSMORE as a suspect, witness or complainant. To include all field interview reports, auto accident and/or officer dispatch numbers where no report narrative was produced." You submit to this office several incident reports. You claim that the 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 have reviewed the documents at issue.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to 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 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 city compile the individual's criminal history. Where an individual's criminal information history 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 recognize a privacy interest by limiting access to criminal history record information, which states obtain from the federal government or other states). 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 individual's criminal history pursuant to section 552.101.¹

You represent that case 92-49951 involves a juvenile offender. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). Therefore, we conclude that case 92-49951 is excepted from disclosure under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code.

You represent that case 98-51368 is pending prosecution and that it is excepted from required public disclosure pursuant to section 552.108 of the Government Code. Section 552.108 of the Government Code, as amended by the Seventy-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; . . .

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Because you have informed us that the records at issue in case 98-51368 pertain to a pending criminal prosecution, we conclude that you have met your burden of establishing that the release of the requested information concerning case 98-51368 could interfere with law enforcement or prosecution. You therefore may withhold most of the requested information concerning this case pursuant to section 552.108.

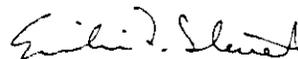
Section 552.108(a)(1) does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). The same type of information was specifically made

¹On the other hand, the individual's privacy interest is not implicated where he is identified as being either a victim or witness.

public in *Houston Chronicle Publishing Company 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). In that case, the court held that the public had a right to the information usually contained on the front page of an offense report: the offense committed, location of the crime, an identification and description of the complainant, the premises involved, the time of the occurrence, property involved, vehicles involved, a description of the weather, a detailed description of the offense in question, and the names of the investigating officers. This information must be released from case 98-51368.

Because we have addressed whether each item of the information submitted must be released, we need not address your additional argument for the application of section 552.108. 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,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 121657

Enclosures: Submitted documents

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(w/o enclosures)