



June 14, 1999

Lieutenant Bill Kral  
Amarillo Police Department  
200 E. 3<sup>rd</sup>  
Amarillo, Texas 79101- 1514

OR99-1650

Dear Lieutenant Kral:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124845.

The Amarillo Police Department (the "department") received a request for five specified reports. You have submitted the responsive information to this office for review. You contend that the subject information is excepted from public disclosure by sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that reports 99-9212, 99-14575 and 99-16992 are made confidential by common law privacy and therefore excepted from disclosure by section 552.101 of the Government Code. Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses the common-law right to privacy. The common-law right to privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We have marked those portions of the subject information that we consider to be protected by common-law privacy. The marked information must be withheld under section 552.101 of the Government Code.

You also contend that the request implicates privacy rights because it "asks for any other reports" on the subject individual and is therefore a request for an entire 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 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). However, in this case the request asks for specific reports, identified by number, and for *instructions* on how to obtain any reports not listed. The request is therefore not for the compiled criminal history of the subject.

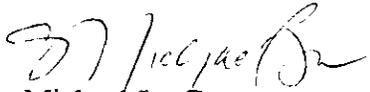
In your argument under section 552.108, you relate, "I believe these reports to be excepted from disclosure because the case investigation has been concluded; it has not been adjudicated and therefore it has not resulted in conviction or deferred adjudication against any person." You argue that the information is excepted in its entirety. However section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing 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). The basic front page offense and arrest information, cannot be excepted from disclosure under section 502.108.

Your argument raises section 552.108 (a)(2) of the Government Code. This section excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of a crime only in relation to an investigation that did not result in conviction or deferred adjudication. We note that reports 97-116767 and 99-15060 include notations that no criminal charges were filed in these cases and that these investigations were closed. Report 99-9212 includes the notation that this case is closed; the content indicates that the investigation did not led to prosecution. Based on your representation and our review of these reports, we conclude that, other than front page information, these reports may be withheld pursuant to section 552.108(a)(2).

Your argument also raises section 552.108 (a)(1), which excepts information in pending investigations and prosecutions. Report number 99-14575 contains the notation that the investigation will remain inactive "until further information is developed." We construe this as an indication that this investigation has not concluded. Also, report 99-16992 contains the notation that the suspect "will be arraigned." The submitted materials also include a letter from the Potter County Attorney which indicates that this case is pending prosecution. We conclude that reports 99-14575 and 99-16992 involve investigations or prosecutions that are pending. These reports are therefore excepted from disclosure by section 552.108(a)(1). Although information excepted by section 552.108 may be withheld, you may choose to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

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.

Sincerely,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/nc

Ref: ID# 124845

Encl. Submitted documents

cc: Mr. Learcell Wesley  
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(w/o enclosures)