



October 1, 1999

Ms. Barbara Heptig
Assistant City Attorney
Mail Stop 04-0200
P.O. Box 1065
Arlington, Texas 76004-1065

OR99-2793

Dear Ms. Heptig:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128238.

The Arlington Police Department (the "department") received an open records request for the "offense (officer's narrative) report; arrest report; incident report" regarding a named individual on a particular date. You contend that because the requestor did not specify an offense in connection with the referenced incident, the requestor is seeking a compilation of the named individual's criminal history, and contend that the department therefore must withhold the requested information pursuant to section 552.101 of the Government Code.

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. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

We generally agree with your contention that when a requestor is seeking all department records in which a 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).

Similarly, open records decisions issued by this office acknowledge this privacy interest. *See* Open Records Decision Nos. 616 (1993), 565 (1990).

In this instance, however, the requestor is merely asking that the department provide records pertaining to the arrest of a named individual on a particular date. Such a request does not require the compilation of the named individual's criminal history.¹ Nor does the records request implicate the prohibitions found in chapter 411 of the Government Code to release "criminal history record information."

This does not, however, end our discussion of whether the requested information must be released to the requestor. After reviewing the records at issue, we believe that some of the information contained therein otherwise implicates the arrested individual's right of privacy. In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information that relates to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has also determined that common-law privacy protects the following information: the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987); the results of mandatory urine testing, *id.*; illnesses, operations, and physical handicaps of applicants, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); the names of parents of victims of sudden infant death syndrome, Attorney General Opinion JM-81; and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress. Open Records Decision No. 343 (1982). We have marked the portions of the records at issue that the department must withhold on privacy grounds.

Finally, section 552.130(a)(2) requires the withholding of information relating to "a motor vehicle title or registration issued by an agency of this state." We have marked the information that must be withheld from the public pursuant to section 552.130(a)(2) of the Government Code. Because you have raised no other applicable exception, the remaining information in these records must be released to the requestor, except as discussed above.

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

¹Because the requestor has clarified that he seeks information pertaining to only one incident, we conclude that only the documents you submitted to this office as Exhibit B-3 come within the ambit of the current records request. Accordingly, we do not address the public nature of the other documents you submitted to this office in connection with this request.

regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Karen Hattaway".

Karen Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/nc

Ref.: ID# 128238

Encl: Submitted documents

cc: Mr. Mauricio Segovia
SFI Investigations
332 W. Pipeline
Hurst, Texas 76054
(w/o enclosures)