OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

February 23, 2000

Ms. Tenley A. Aldredge
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2000-0653

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132383.

The Travis County District Attorney's Office (the "district attorney") received an open records request for all information contained in the district attorney's files relating to the investigation and prosecution of a particular individual. You indicate that the district attorney has released front page offense report information. *See* Gov't Code § 552.108(c); *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). You also indicate that the district attorney has released to the requestor documents filed with the court. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992). You claim that the remaining information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

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. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). You assert that "the request records, taken together, constitute criminal history record information ("CHRI") obtained from the Travis County Criminal Justice System ("CJS")." 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 (1999) (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). Therefore, the district attorney must withhold all information relating to the request pursuant to section 552.101 in conjunction with the common law right to privacy.[1]

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

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[1]Because we are able to make a determination under section 552.101, we need not address your other claimed exceptions.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Carla Gay Dickson

Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ch

Ref: ID# 132383

Encl. Submitted documents

cc: Ms. Alicia A. Wilde
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98 San Jacinto Boulevard, Suite 600
Austin, Texas 78701
(w/o enclosures)