



February 29, 2000

Lieutenant Brad Lancaster  
Amarillo Police Department  
200 East 3<sup>rd</sup>  
Amarillo, Texas 79101-1514

OR2000-0781

Dear Lieutenant Lancaster:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132518.

The City of Amarillo Police Department (the "department") received a request in which the responsive information provided for our review consists of thirty-five incident reports, all involving a named individual as either a suspect or a complainant in each described incident. You assert that this information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you assert and reviewed the submitted information.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving a public information request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e).

As to the above-stated item (2), the department provided this office a copy of only the front of a request form that appears to have been promulgated by the department. The requestor marked the form next to language which states she is seeking copies "of the following Incident Report numbers," below which the requestor wrote "see list on back." We thus assume the back of the form contains the actual written request. Because the department failed to provide this office with a copy of the back of the form, the department did not comply with the above-stated item (2). As to the above-stated item (3), you do not state when the department received the request for information. The front of the request form is dated December 17, 1999 by the requestor, but contains no indication of when the form was received by the department. Because the date the requestor writes a request is not necessarily

the same date that the governmental body received the request, we cannot assume that the department received the request on December 17, 1999. The date written by the requestor, standing alone, is thus insufficient evidence of when the department received the request. The department thus failed to comply with the above-stated item (3). As to the above-stated item (4), the front of the request form also contains a mark indicating the requestor is seeking "a copy of any photographs that were taken in conjunction with the above-listed reports." In your correspondence to this office, you state that the crime scene photographs are "not enclosed." Because the department failed to provide this office with copies of the photographs or representative samples of the photographs, the department failed to comply with the above-stated item (4) with respect to the requested photographs. *See* Gov't Code § 552.002(c) (the general forms in which the media containing public information exist include photographs). Moreover, you represent to this office that the information responsive to the request includes incident report numbers 95-43480 and 94-10196, yet you did not provide this office with copies of this information.<sup>1</sup>

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Gov't Code § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). A demonstration that the requested information is deemed confidential by law or implicates a third party's interest is a compelling interest sufficient to negate this presumption. *See* Open Records Decision No. 150 (1977). Because the department failed to comply with section 552.301(e), the department has waived its section 552.108 assertion. *See, e.g.*, Open Records Decision No. 470 at 2 (1987) (except for information made confidential by law or that could impair the rights of third parties, the exceptions under the Public Information Act are generally permissive). Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." We shall accordingly address your section 552.101 assertion with respect to that information the department did submit to this office for review.<sup>2</sup>

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<sup>1</sup>Neither do you advise this office that the information you have submitted for review consists of representative samples of the responsive information. *See* Gov't Code § 552.301(e)(1)(D) (in requesting a ruling from this office, a governmental body is required to submit to this office for review the requested information, or representative samples if a voluminous amount of information is requested.)

<sup>2</sup>Because neither copies of the responsive photographs nor representative samples of the responsive photographs have been provided to this office, we are unable to ascertain whether any of this information is confidential by law or implicates the interests of a third party. Nor are we able to ascertain whether the incident reports not submitted to this office contain confidential information. We caution that the release of confidential information is a criminal offense. *See* Gov't Code § 552.352.

Section 552.101 encompasses common law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). You represent to this office that the requestor seeks “all [department] reports naming [a named individual] as a party.” Because you did not provide this office a copy of the request, we are unable to verify this representation. However, 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). If the wording of the request is essentially as you represent, we find the request implicates the privacy interests of the named individual, but only to the extent that the information responsive to the request consists of a compilation of the named individual’s criminal history and only to the extent that the individual is a possible suspect or offender. *See, e.g.*, Open Records Decision Nos. 628 at 4-5 (1994) (finding the names of victims of crime to generally not implicate the victim’s privacy interests, and describing the types of crime victim information protected by common law privacy), 616 at 2 (1993) (distinguishing a “mug shot” as not protected by privacy interests, in part, because it is not contained in a compilation of the individual’s criminal history). Thus, if the request is worded as you represent, we conclude you must withhold in their entirety those incident reports, which we have marked, in which the named individual is indicated to be a suspect or offender.

Because the requestor refers to a “list,” we find it conceivable that the requestor framed the request as seeking incident reports specified by number. If this is the case, we determine the requestor and not the department has undertaken the act of compilation, and that such a request in and of itself would not therefore necessarily implicate the right to privacy of the named individual. Thus, to the degree that the request is for specified incident reports, the department may not withhold in their entirety those responsive incident reports in which the named individual is indicated to be a suspect or offender. In such a circumstance, these reports are subject to release but with certain information redacted, which we have marked, as discussed below.

Section 552.130 of the Public Information Act governs the release and use of motor vehicle record information. Section 552.130 provides:

- (a) Information is excepted from [required public disclosure] if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130. We believe this provision protects information such as Texas driver's license numbers, license plate numbers, and vehicle identification numbers. In accordance with this provision, we have marked for redaction the information in the submitted documents implicated under Section 552.130(a), and we determine you must not release this information.

We note the submitted reports contain social security numbers, which we have marked. Social security numbers must be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers at issue are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act on the basis of that federal provision. We caution, however, that section 552.353 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990. Except as otherwise noted herein, you must release the responsive information to the requestor.

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

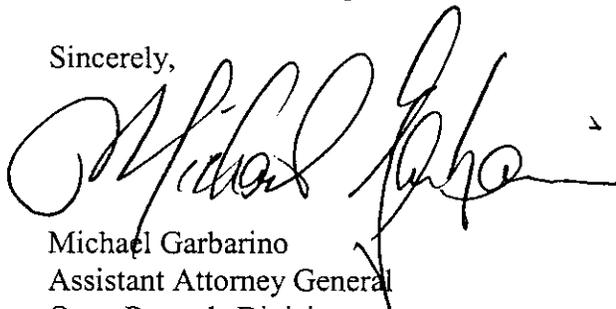
have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

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).

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,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/jc

Ref: ID# 132518

Encl. Submitted documents

cc: Ms. Mary Varaghese  
6200 I-40 West  
Amarillo, Texas 79101  
(w/o enclosures)