



May 8, 2000

Ms. Mary E. Reveles
Assistant County Attorney
County of Fort Bend
301 Jackson, Suite 621
Richmond, Texas 77469-3108

OR2000-1769

Dear Ms. Reveles:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135126.

The Fort Bend County Sheriff's Department (the "department") received a written request for all department records pertaining to three named individuals for the period from January 1, 1990 to February 29, 2000. You contend that the requested information is excepted from disclosure under sections 552.101 and 552.108 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. 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. To the extent that the requestor is seeking all department records in which the named individuals are identified as a "suspect," the requestor, in essence, is asking that the department compile those individuals' criminal histories. 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)*. Accordingly, the department must withhold all such compilations regarding living individuals on privacy grounds in conjunction with section 552.101 of the Government Code.

On the other hand, three of the offense reports you submitted to this office do not name any of the specified individuals as suspects. Consequently, we must determine the extent to which the department may withhold these records pursuant to the other exception you raised, section 552.108 of the Government Code. You contend that these documents are excepted from required public disclosure pursuant to subsection 552.108(a)(1), (a)(2), (b)(1), and (b)(2). Section 552.108 excepts from public disclosure, in relevant part, as follows:

(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;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

....

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

The only explanation you have provided to this office as to the applicability of section 552.108 to the records not otherwise protected by section 552.101 is that "the release of such records would interfere with the detection, investigation, or prosecution of the crime." You have not, however, explained why such is the case. For example, you have not informed us that the records pertain to pending criminal investigations, and, in fact, the records indicate on their face that such is not the case. Nor can this office discern, after reviewing the offense reports, any reason why their release would interfere with law enforcement or prosecution. We conclude, therefore, that you have not met your burden of establishing the applicability of section 552.108 to the records not otherwise protected by section 552.101. Accordingly, the department must release these three offense reports in their entirety, with the following exception.

One of the offense reports contains an individual's driver's license number. Another offense report contains information revealing the license plate number of an automobile.

Section 552.130(a)(1) of the Government Code requires that the department withhold “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state.” Additionally, section 552.130(a)(2) of the Government Code requires the withholding of information relating to “a motor vehicle title or registration issued by an agency of this state.” Accordingly, the department must withhold the driver’s license number and license plate information contained in the offense reports at issue.

In summary, the department must withhold all compilations of offense reports in which any of the named individuals are named as suspects. The three remaining offense reports must be released in their entirety, except for the driver’s license number and license plate information contained in those reports.

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,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/RWP/ljp

Ref: ID# 135126

Encl. Submitted documents

cc: Mr. J. R. Mercer
P.O. Box 403
Guy, Texas 77444
(w/o enclosures)