



May 22, 2000

Mr. Rick Gonzalez
Assistant City Attorney
City of Lewisville
P. O Box 777
Lewisville, Texas 75067

OR2000-2011

Dear Mr. Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#136541.

The City of Lewisville (the "city") received a request for information relating to a specific incident report, as well as "copies of any incident report of an assault or battery occurring at the Wal-Mart Discount Store . . . in Lewisville, Texas from January 1, 1997 to the present and any information or report of any arrest, charge, or conviction involving" a named individual at any time. You have identified seven responsive reports and released three of those to the requestor, including, we assume, Report No. 99-7638. You claim that the remaining information is excepted from disclosure under section 552.108 of the Government Code and under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that your request to this office does not mention that part of the request seeking any information involving criminal activity by a named individual. 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. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). To the extent the requestor is asking for any unspecified records in which the named individual is identified as a "suspect," the requestor, in essence, is asking that the city compile that person's criminal history. When 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

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)*. The city, therefore, must withhold all compilations of the referenced individual's criminal history pursuant to section 552.101.

As to the four incident reports you have submitted for our review, you indicate that one involves a juvenile suspect, one is a report of an ongoing investigation, and two are reports of investigations that have concluded in a result other than conviction or deferred adjudication. You assert that Report No. 97-9551 is excepted from disclosure based on section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

The information at issue involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, the requested information is confidential pursuant to section 58.007(c) of the Family Code. You must withhold Report No. 97-9551 from disclosure under section 552.101 of the Government Code.

You assert that Report Nos. 99-12463 and 00-2914 are excepted from required disclosure pursuant to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Based on the information you provided, we agree that

the requested reports pertain to cases that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to Report Nos. 99-12463 and 00-2914. Finally, you tell us that Report No. 00-2814 is “still under investigation or being prosecuted,” so should be excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure “if release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). We agree that the release of the information relating to this pending case “would interfere with the detection, investigation, or prosecution of crime.” *Id.*

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). Therefore, the city must release basic information regarding these three incident reports.

In summary, the city must withhold Report No. 97-9551 in its entirety, under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The city may withhold the other three incident reports from disclosure based on sections 552.108(a)(1), (2), except that the city must release the basic front page offense and arrest information. We note that the city has the discretion to release all or part of the remaining information in those three reports that is not otherwise confidential by law. Gov’t Code § 552.007.

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,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID# 136541

Encl. Submitted documents

cc: Mr. Price L. Johnson
900 Jackson Suite 310
Dallas, Texas 75302
(w/o enclosures)