



May 31, 2000

Mr. Scott Gibson
Enforcement Attorney
Texas Board of Architectural Examiners
333 Guadalupe, Suite 2-350
Austin, Texas 78701-3942

OR2000-2119

Dear Mr. Gibson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135938.

The Texas Board of Architectural Examiners (the “board”) received a request for “any and all enforcement files” pertaining to a named architect. You have provided for our review documents that are responsive to the request, some of which you indicate you have already released to the requestor.¹ As to the documents you have not released, you assert that this information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common law right of privacy. We have considered the exception you assert and 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. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The common law right of privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, *and* (2) the information is not of legitimate concern to the public. *Id.*

You argue that the information must be withheld in its entirety because it consists of a compilation of a named individual’s criminal history. This office has stated that where an individual’s criminal history information has been compiled by a governmental entity, the

¹You have marked with yellow flags the documents that you have already released.

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). While we agree that some of the information at issue constitutes a compilation, we note that the information was compiled by the named individual, not the board. Thus, the information at issue was not compiled by any governmental entity. The above-cited case and decisions are therefore inapplicable to the submitted information.

A number of the submitted documents, which we have marked with blue flags, are indicated to have been filed with a court. Documents filed with a court are generally considered public. Gov't Code § 552.022(17) (information that is also contained in a public court record is not excepted from disclosure unless made confidential by other law); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992). Thus, we determine that the documents marked with blue flags must be released in their entirety.

As to the remaining documents, we have identified certain information that consists of intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, *and* in which there exists no legitimate public interest. We have marked the documents that contain such information with red flags, and we have marked for redaction the specific information at issue. We find that the remainder of the information, however, does not meet both prongs of the above-stated common law privacy test. As you have asserted no other exception for withholding this information, we conclude that it must be released to the requestor.

In summary, as to the documents with red flags, you must redact from those documents the specific information we have marked. You must release to the requestor in its entirety the remaining information.

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.

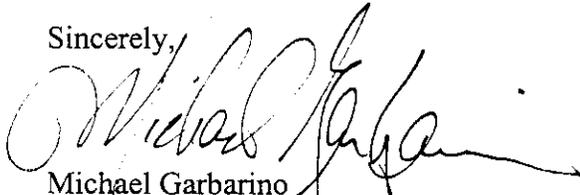
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/ljp

Ref: ID# 135938

Encl. Submitted documents

cc: Ms. Cheri Ibarra
4126 Southwest Freeway, Suite 1410
Houston, Texas 77027
(w/o enclosures)