



August 2, 2000

Ms. Deanie Bostic-Martin
Records System Supervisor
Lubbock Police Department
P.O. Box 2000
Lubbock, Texas 79457

OR2000-2920

Dear Ms. Martin:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137619.

The City of Lubbock Police Department (the "department") received a request for the following four items about a particular individual:

- 1) investigation reports about the individual as a suspect, witness or complainant from January 1997 to the date of the request letter;
- 2) field interview reports and/or officer dispatch numbers where no report narrative was produced that name the individual from January 1997 to the date of the request letter;
- 3) reports naming the individual as a suspect or witness for any offense which occurred on or about 2/23/98;
- 4) reports naming the individual as the suspect for the offense of robbery, aggravated robbery on or about 2/23/98.

You indicate that the department has no information responsive to the request for dispatch records. You claim that the remaining information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You suggest that the public release of the requested information may violate the named individual's common law right to privacy and that, consequently, the information is protected from disclosure based on section 552.101 of the Government Code. Section 552.101 excepts from required public disclosure information that is made confidential by law, including information that is made confidential by judicial decision. This exception applies to information considered confidential under judicial decisions recognizing 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). Information may be

withheld under section 552.101 in conjunction with the common law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

The release of a compilation of offense reports in which an individual is listed as the suspect implicates that individual's common law right to privacy. *See United States Dept' of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749 (1989); *Houston Chronicle Publishing Co.*, 531 S.W.2d at 179. In this case, the requestor has identified a particular police report by the date of the occurrence of the crime, "2/23/98," and the type of crime, "robbery" and "aggravated robbery." We therefore do not believe that the request for this particular report requires the department to create a compilation of the individual's criminal history. However, as compliance with the request for item one does require the department to compile the individual's criminal history, we conclude that the release of the information responsive to request item one is protected from disclosure based on section 552.101 in conjunction with the common law right to privacy.

As your section 552.108 claim was not raised for the specified 2/23/98 report and as the department raised no other exception to the required public disclosure of that report, we conclude that the department must release the report to the requestor with one exception. The department must not release to the requestor information in the report made confidential by section 552.130 of the Government Code. Section 552.130 applies to "information [that] relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state." We have marked the information in the 2/23/98 report covered by section 552.130.

In summary, with the exception of the specified 2/23/98 report, the department must withhold the requested information from the requestor based on section 552.101 in conjunction with the common law right to privacy. The department must release the 2/23/98 report to the requestor except to the extent that the report includes information excepted from disclosure under section 552.130 of the Government Code.

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,



Kay Hastings
Assistant Attorney General
Open Records Division

KHG/pr

Ref: ID# 137619

Encl. Marked documents

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