



August 8, 2000

Sergeant Martin Birkenfeld
Amarillo Police Department
200 S. E. 3rd
Amarillo, Texas 79101-1514

OR2000-2999

Dear Sergeant Birkenfeld:

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# 138123.

The Amarillo Police Department (the “department”) received a request for any incident reports and criminal history information of a named individual, as well as various information related to “any and all officers regarding disorderly conduct.”¹ You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You argue that the request for the criminal history information violates the named individual’s privacy rights because responding to the request would be “tantamount to building a criminal history of the 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. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). The requestor is specifically asking for a compilation of criminal history information for the named individual. Where an individual’s criminal history information has been compiled

¹We note that you have neither submitted information related to the “disorderly conduct” portion of the request, nor raised an exception against its disclosure. Therefore, we assume that you have released the information. If you have not yet released this information, you must do so at this time. See Gov’t Code §§ 552.301, 552.302.

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). In the present case, the requestor is asking for unspecified records in which the named individual is identified. Thus, we find that the named individual's right of privacy has been implicated to the extent the named individual is identified as a suspect. Therefore, all compilations of the referenced individual's criminal history must be withheld, in its entirety, pursuant to section 552.101. We have marked the information that you must withhold pursuant to section 552.101.

You have submitted offense reports in response to the request for "any incident reports" on the named individual. You argue that the reports are excepted from public disclosure pursuant to Government Code subsection 552.108(a). Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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[.]" You indicate that offense report number 1997-00049247 relates to a case which is closed. Based on your representation and our review of the report, we conclude that you may withhold a portion of the report pursuant to section 552.108(a)(2).

Section 552.108(a)(1) excepts from public disclosure information which would "interfere with the detection, investigation, or prosecution of crime[.]" You explain that the remaining offense reports related to cases that are currently pending. Based on your representations and a review of the reports, we find that most of the requested information in these offense reports is excepted from disclosure pursuant to section 552.108(a)(1).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. See 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). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the requested report. Thus, with the exception of the basic front page offense information which must be disclosed, you may withhold the submitted offense reports based on subsections 552.108(a)(1) and 552.108(a)(2). For your reference, we have marked the reports with the applicable exception. Although section 552.108(a) authorizes you to withhold the remaining information from disclosure, you may choose to release all or

part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

In summary, the information that identifies the individual named in the request as a suspect is excepted from disclosure in its entirety; this information must not be released pursuant to section 552.101 of the Government Code. Except for basic information which must be released, the remaining offense reports may be withheld pursuant to Government Code section 552.108(a).

This letter ruling is limited to the particular records at issue in this request and 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).

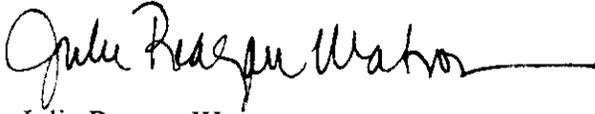
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 that reads "Julie Reagan Watson". The signature is written in a cursive style and ends with a horizontal line.

Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/pr

Ref: ID# 138123

Encl. Submitted documents

cc: Ms. Inda Crawford
Templeton Smithee Hayes Fields Young & Heinrich, L.L.P.
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(w/o enclosures)