



October 3, 2000

Mr. Steven D. Monté
Assistant City Attorney
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR2000-3797

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140835.

The City of Dallas (the "city") received a request for: (1) "any open records regarding [two named individuals] from December 1998 to August 2000;" and (2) any police report regarding a specific incident in which the ex-husband of one of the named individuals kicked down the door of the requestor's condominium. You claim that the first request implicates the named individuals' rights to privacy, and therefore the information is excepted from disclosure under section 552.101 of the Government Code. Because you have only requested a decision concerning information responsive to the first request, we assume that you have released any information responsive to the second request. *See* Gov't Code §§ 552.301, .302. We have considered the exception you claim and reviewed the submitted information.

Section 552.301 dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Among other requirements, the governmental body "must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request." Gov't Code § 552.301(d). If the governmental body fails to do this, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." *Id.* § 552.302.

You state that you received the written request on August 14, 2000; therefore, you had until August 28, 2000 to request a decision. Because your request for a decision was faxed to this office on August 30, 2000, you have failed to request a decision within the ten business day period under section 552.301(b). Therefore, we must presume the requested information is subject to public disclosure unless there is a compelling reason to withhold the information.

You argue that section 552.101 of the Government Code excepts the information from disclosure because it is protected under the common law right to privacy. Section 552.101 of the Government Code provides a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Included within this exception is information considered confidential under the common law right to privacy. 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); Open Records Decision Nos. 616 (1993), 565 (1990). Because a response to the request for “any open records” concerning two named individuals in this instance would require the compilation of the individuals’ criminal history, we find that such information must be withheld under section 552.101 to the extent it identifies the individuals as suspects.

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).

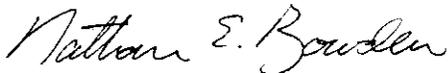
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 140835

Encl: Submitted documents

cc: Ms. Lynn M. Ben-Ami
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(w/o enclosures)