



December 6, 2000

Mr. Sim W. Goodall  
Police Legal Advisor  
City of Arlington Police Department  
620 West Division Street  
Arlington, Texas 76010

OR2000-4610

Dear Mr. Goodall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141951.

The City of Arlington Police Department ("the department") received a request for police reports and narratives for a specific individual. You have submitted for our review copies of responsive documents that are labeled "B" through "K." You assert that the information is excepted from disclosure under section 552.101 and Chapter 411 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure by the common law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. Where 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). In this instance, the requestor asks for police reports and narratives for a specific individual. The named individual is listed as a suspect (or a potential suspect) in documents "B," "C," "D," "F," "H," "I," "J" and "K." We believe the individual's right to privacy has been implicated in the gathering of this criminal history information. Therefore, we conclude that you must

withhold these specific documents in their entirety under common law privacy as encompassed by section 552.101 of the Government Code. *See id.*

In documents "E and G," the named individual is not listed as a suspect and therefore these documents do not record criminal history information and are not confidential under section 552.101. However, the individual's driver's license and motor vehicle information in document "E" is confidential under section 552.130 of the Public Information Act and therefore must be withheld. In addition, certain information in document "G" is confidential under section 552.101 in conjunction with common law privacy and must be withheld. For your reference, we have marked those portions of documents "E" and "G" which must be withheld.

Finally, we note that the requestor has indicated that she is making this public information request on behalf of the named individual. Section 552.023 of the Government Code grants a special right of access to a person or a person's authorized representative to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests. In this instance, because the requestor has not established that she is the "authorized representative" of the individual whose privacy is being protected, we do not find that the requestor has a special right of access to this information under section 552.023.

Because we make a determination under section 552.101 of the Public Information Act, we need not consider your additional arguments under Chapter 411 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;

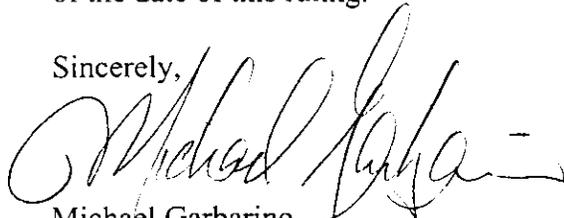
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things 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).

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 Hadassah Schloss at 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,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/db/seg

Ref: ID# 141951

Encl. Submitted information

cc: Ms. Marsha Vestal  
2642 Hidden Ridge  
Arlington, Texas 76006-4011  
(w/o enclosures)