



December 6, 2000

Mr. Mark E. Dempsey  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR2000-4614

Dear Mr. Dempsey:

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# 142443.

The City of Garland received a request for information about arrest and other records concerning a particular individual over a three-year period. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Under *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989),<sup>1</sup> where an individual's criminal history information has been compiled or summarized by a governmental entity, the information takes on a character that implicates the individual's right of privacy in a manner that the same individual records in an uncompiled state do not. Thus, when a requestor asks for all information concerning a certain named individual and that individual is a possible suspect, a law enforcement agency must withhold this information under section 552.101 because that individual's privacy right has been implicated. *See id.* In this instance, the requestor seeks any and all criminal records of a particular individual. This is exactly the type of information that was contemplated by the Court in *Reporters Committee*. Therefore, we find that the submitted documents, with one

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<sup>1</sup>We consider *Reporters Committee* to be a "judicial decision" for purposes of section 552.101 of the Government Code.

exception explained below, must be withheld in their entirety under section 552.101 and the holding in *Reporters Committee*.

In one report, which we have marked with a red tab, the individual about whom the requestor has inquired is the victim of an alleged crime and not the suspect. The names of victims of crime generally do not implicate the victim's common law privacy interests. *See* Open Records Decision No. 628 at 4-5 (1994). For information to be protected from public disclosure under the common law right of privacy, the information must meet the criteria set out in *Industrial Found. v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law 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.

540 S.W.2d at 685; Open Records Decision No. 142 at 4 (1976) (construing statutory predecessor to Gov't Code § 552.101). The identities of adult victims of family violence are not *per se* excepted from disclosure. *See* Open Records Decision No. 611 at 1-2 (1992). The determination of whether the information in a particular file can be excepted from disclosure under the common law right of privacy must be made on a case-by-case basis. *Id.* at 2; *Industrial Foundation*, 540 S.W.2d at 685 (stating that whether the matter is of legitimate interest to the public can be considered only in the context of each particular case).

None of the information in the report is highly intimate or embarrassing or of no legitimate interest to the public. Therefore, the report which we have marked is not protected from disclosure under section 552.101, in conjunction with the common law right of privacy, and must be released in its entirety.

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).

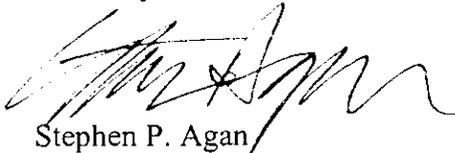
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Stephen P. Agan  
Assistant Attorney General  
Open Records Division

SPA/seg

Ref: ID# 142443

Encl. Submitted documents

cc: Mr. Michael Mayfield  
The Law Offices of Marc H. Richman  
Legal Arts Center  
304 South Record Street  
Dallas, Texas 75202  
(w/o enclosures)