



January 23, 2001

Mr. Brendan Hall
City Attorney
City of Harlingen
P.O. Box 2207
Harlingen, Texas 78551

OR2001-0249

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143450.

The City of Harlingen (the "city") received a request for offense reports, incident reports, supplement reports, investigative reports, statements, and photographs relating to a specified location from January 1990 to the date of the request, and such information relating to seven specified individuals. 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.

The Public Information Act requires a governmental body that wishes to withhold requested information to provide to this office a copy of the specific information requested, or a representative sample thereof, labeled to indicate which exceptions apply to which parts of the information, within fifteen business days of its receipt of the request for information. Gov't Code § 552.301(e). If the governmental body does not comply with this requirement, 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. Gov't Code § 552.302. Such a compelling reason is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Record Decision No. 150 (1977). The submitted information does not include any offense reports, incident reports, supplement reports, investigative reports, statements, or photographs. As you have not submitted any offense reports, incident reports, supplement reports, investigative reports, statements, or photographs, we have no basis for finding such information to be confidential. If such information exists, it must be released per section 552.302. If you have information which you have not submitted which you believe is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

You contend that the information which you have submitted to this office as responsive to this request is made confidential by the common law right of privacy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Information is protected by common law privacy 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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) (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). Therefore, where a request seeks a compilation of an individual's law enforcement records, those records which indicate that the individual was arrested or was a suspect are protected by the common law right of privacy. The portion of the request that seeks the records of named individuals is a request for a compilation of the criminal history records of those individuals only to the extent that an individual is identified as a suspect or arrestee. The submitted information that identifies a named individual as a suspect is protected by the common law right of privacy and must be withheld.

However, a request that seeks a compilation of law enforcement records related to a specific address or to a specific individual not identified as a suspect or arrestee does not implicate common law privacy protection. Therefore, information responsive to that portion of the request that seeks law enforcement records related to the specified location and time period is not protected by the common law right of privacy. Such records must be released. We have marked the submitted materials to indicate the information which must be released and that which must be withheld under section 552.101 of the Government Code in conjunction with the common law right of privacy.

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).

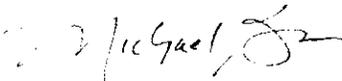
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

MJB/er

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Encl: Submitted documents

cc: Mr. Tom Reed
State Farm Insurance Companies
4444 Corona, Suite 140
Corpus Christi, Texas 78411
(w/o enclosures)