



April 18, 2001

Mr. Paul F. Wienskie
Cribbs & McFarland
P.O. Box 13060
Arlington, Texas 76094-0060

OR2001-1539

Dear Mr. Wienskie:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146173.

The Euless Police Department (the "department"), which you represent, received a request for three categories of information including: (1) [a] copy of the 9-1-1 tape from Feb. 1, 2001, relating to the aggravated kidnaping of Candida Chavira and Alyssa Chavira in the 600 block East Denton Drive; (2) [c]opies of any complaints filed against Delfino J. Romero Jr. with the department, including complaints of criminal mischief and telephone harassment; and (3) [c]opies of the arrest warrants for Delfino J. Romero Jr. issued Thursday, Feb. 1, 2001. You state the 9-1-1 tape has already been released to the requestor and that the department does not object to the release of the arrest warrant. As you did not submit the arrest warrant for our review, nor indicate that you seek to withhold it, we assume you have already released this information to the requestor. If you have not released the arrest warrant, you must release it to the requestor at this time. *See Gov't Code* §§ 552.301(a), .302. You claim the remaining 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.¹

¹ We note that you have submitted, as exhibit "C", an affidavit in support of an arrest warrant. We believe this document is unresponsive to the original request; consequently, we do not rule on any portion of this document.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”² Pursuant to *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), 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.* After reviewing your arguments and the submitted documents, we believe that the identified individual’s right to privacy has been implicated by the present request. Thus, as in Exhibits B-1 and B-2, where the responsive information identifies the named individual as a suspect or offender, we conclude that the department must withhold this information under section 552.101 of the Government Code and *Reporters Committee*.

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.

² Though you do not raise this exception in your request, the Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

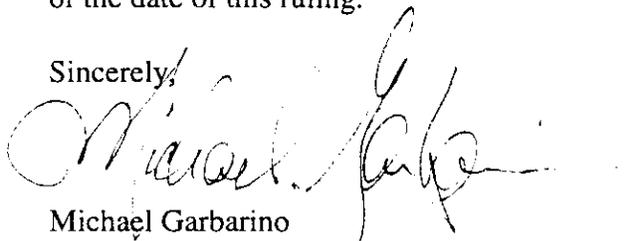
The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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/DBF/seg

Ref: ID# 146173

Encl. Submitted documents

cc: Ms. Kelly Melhart
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(w/o enclosures)