



August 31, 2001

Ms. Angela K. Washington
Cowles & Thompson
Attorneys and Counselors
901 Main Street, Suite 4000
Dallas, Texas 75202-3793

OR2001-3871

Dear Ms. Washington:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151360.

The Rowlett Police Department (the "department"), which you represent, received a request for the following information concerning the requestor's client:

- (1) ALL records as to past and present warrants for arrest, including, but not limited to, information as to the reason for the warrants, the present status, the amount of any fine, status of fine payments.
- (2) ALL records as to any and all arrests, including, but not limited to, information as to the reason for the arrest(s), the duration of the arrest(s), date of release(s), how release(s) obtained, whether bail posted, individual posting bail.
- (3) ALL records as to any and all past and present surveillance of [the requestor's client], including, but not limited to, information as to the reasons for surveillance, whether surveillance was ended and reason(s) for same.

You state that you have released some of the information, marked as Exhibit D, to the requestor. However, the remainder of the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common law privacy and

section 58.007 of the Texas Family Code and sections 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert Exhibits B and C are excepted from disclosure under section 552.101 of the Government Code in conjunction with common law privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses an individual's common law privacy rights. 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). Here, the requestor is asking the department to compile the named individual's criminal history. Thus, the named person's privacy is implicated.

However, the requestor in this instance is the named individual's attorney. Section 552.023 of the Government Code states that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a). Moreover, the named individual has expressly consented to the release of criminal investigation information to the requestor in his document entitled "Release of Information Authorization to Police Department" dated June 6, 2001. Because the requestor is authorized by the individual who is the subject of the information to receive the information, the individual's privacy right is not implicated in this instance. See Gov't Code §§ 552.023, .229.

Your further assert that section 552.130 of the Government Code excepts from public disclosure the driver's license number of the requestor's client contained in Exhibits B and C. Section 552.130 excepts information that relates to a driver's license issued by an agency of this state. Gov't Code § 552.130(a)(1). However, because section 552.130 protects an individual's privacy, the requestor has a special right of access under section 552.023 to her client's driver's license number. Therefore, we conclude the department must release Exhibits B and C to the requestor.

Next, you state that to the extent Exhibit E is responsive to the request, Exhibit E is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Texas Family Code. Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise,

concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). The information at issue involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, the requested information is confidential pursuant to section 58.007(c) of the Family Code. You must withhold the information from disclosure under section 552.101 of the Government Code.

Lastly, you assert that to the extent Exhibit F is responsive to the request, Exhibit F may be withheld pursuant to sections 552.103 and 552.108 of the Government Code. Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). You inform us that the requested information pertains to a pending case. We therefore believe that the release of the information "would interfere with the detection, investigation, or prosecution of crime." *Id.* Thus, the department may withhold Exhibit F under section 552.108(a)(1).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see also* Open Records Decision No. 127 at 4 (1976). Section 552.108 does not except from disclosure information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. With the exception of the basic front page offense and arrest information, you may withhold Exhibit F from disclosure based on section 552.108(a)(1).¹

¹Generally, basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

We note that you have the discretion to release all or part of the information that is excepted by section 552.108 and that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the department must release Exhibits B and C, in their entirety, to the requestor; Exhibit E must be withheld under section 552.101 in conjunction with section 58.007 of the Family Code; and Exhibit F, with the exception of basic information about an arrested person, an arrest, or a crime, may be withheld under section 552.108(a)(1).

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).

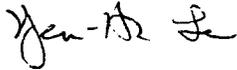
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/seg

Ref.: ID# 151360

Enc. Submitted documents

c: Ms. Janice F. Brandt
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(w/o enclosures)