OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

October 25, 2002

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

OR2002-6051

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171217.

The Garland Police Department (the "department") received a request for all reports regarding a specific address and two individuals for a specified time period. You state that you have released a portion of the responsive information. However, you claim that the highlighted portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We initially address the portion of the request that seeks all records regarding the two named individuals. 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 all records regarding two named individuals. In this case, we believe that these individuals' right to privacy has been implicated. Thus, to the extent information exists where the named individuals are a possible suspect, arrestee, or

defendant, we conclude that you must withhold this information under common-law privacy as encompassed by section 552.101 of the Government Code. *See id.*

In regard to the second portion of the request that seeks all reports regarding a specified address, you raise section 552.101 of the Government Code in conjunction with the common-law right of privacy. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Having reviewed the submitted documents, we agree that some of the information you have highlighted is considered intimate or embarrassing and is not of legitimate concern to the public. Therefore, you may withhold the information we have marked under section 552.101 in conjunction with the common-law right of privacy. However, the remainder of the highlighted information is not highly intimate or embarrassing. Therefore, this information is not protected by common-law privacy and you may not withhold it under section 552.101.

Additionally, you raise section 552.130 of the Government Code. Section 552.130(a) excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Thus, you must withhold the Texas license plate number you have highlighted pursuant to section 552.130 of the Government Code.

In summary, we conclude that, to the extent information exists where the named individuals are a possible suspect, arrestee, or defendant, you must withhold this information under common-law privacy as encompassed by section 552.101. Furthermore, in regard to the submitted information, we conclude that: 1) you must withhold the information we have marked under section 552.101 in conjunction with the common-law right of privacy; and 2) you must withhold the Texas license plate number you have highlighted pursuant to section 552.130. All remaining information must be released.

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).

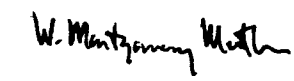
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 171217

Enc: Submitted documents

c: Ms. Earline Cummings
4013 University Dr.
Garland, Texas 75043
(w/o enclosures)