



October 29, 2002

Ms. Tamara Pitts
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2002-6145

Dear Ms. Pitts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171362.

The City of Fort Worth (the "city") received a request for offense report numbers 02497533, 020031064, and 96328079. The requestor also asks for all information regarding a named individual, and reports and calls for service regarding several specified addresses. You state that you have released some responsive 911 dispatch information and police reports to the requestor. We note you have not submitted offense report numbers 02497533, 020031064, and 96328079 for our review. Therefore, we assume that, to the extent these reports exist, you have released them to the requestor.¹ If not, you must do so immediately. See Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances). You claim that the remainder of 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 of the Government Code 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

¹ The request indicates that offense report number 020031064 may have been created by a different city's police department. We note that the Public Information Act does not ordinarily require a governmental body to release information that was not within its possession or control when it received a request. Open Records Decision Nos. 558 (1990), 499 (1988).

(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. When a law enforcement agency is asked to compile a particular individual's criminal history information, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); see also Open Records Decision No. 616 at 2-3 (1993). In part, this request is for unspecified police department records that pertain to a named individual. In this case, we believe that this individual's right to privacy has been implicated. Thus, where the named individual is a possible suspect, we determine that this information is made confidential under common-law privacy as encompassed by section 552.101 of the Government Code. See *id.* Some of the submitted offense reports, however, make reference to the named individual as a victim or complainant, and not as a criminal suspect, arrestee, or defendant. This information is not part of the compilation of this individual's criminal history. Accordingly, the submitted reports that identify the named individual as a victim or complainant may not be withheld under section 552.101 and *Reporters Committee*. As you have raised no exceptions to disclosure for these reports, we determine that submitted reports that identify the named individual as a victim or complainant must be released to the requestor. You ask this office to issue you a previous determination for criminal history record information. We decline to issue a previous determination for criminal history record information at this time.

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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 171362

Enc: Submitted documents

c: Ms. Holly Adams
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Fort Worth, Texas 76134
(w/o enclosures)