



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

January 15, 2003

Ms. J. Middlebrooks  
Assistant City Attorney  
Criminal Law & Police Section  
City of Dallas  
2014 Main, Room 501  
Dallas, Texas 75201

OR2002-0307

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#175000.

The City of Dallas Police Department (the "department") received a request for copies of all offense/incident reports or calls for service at a specified address and for copies of all reports listing a named individual as a suspect, complainant or witness since January 1, 1990. You claim that portions of the submitted information contained 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 representative sample of information you submitted.<sup>1</sup>

Initially, we must address the department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Further, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You state that the department received the present request for information on September 23, 2002. The department did not request a decision from this office until November 4, 2002, and did not submit the specific information requested or its comments stating the reasons why the claimed exceptions should apply until November 5, 2002. Consequently, the department failed to comply with the requirements of both section 552.301(b) and section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). As section 552.101 and section 552.130 of the Government Code provide compelling reasons to overcome the presumption of openness, we will address your arguments under those exceptions. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also applies to information that is protected under the common-law right to privacy. You have marked certain information in the submitted documents that, you assert, must be withheld on this basis. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* includes 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. 540 S.W.2d at 683. We do not believe that any of the information you have marked for protection under common-law privacy meets the test set out in *Industrial Foundation*, as the marked information is of legitimate concern to the public.

We note, however, the existence of criminal history information within the submitted documents that is protected by common-law privacy. 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 reports of a named individual during a specified time frame. In this

case, we believe that this individual's right to privacy has been implicated. Thus, to the extent the department maintains responsive records in which the named individual is identified as a suspect, arrestee, or offender, the department must withhold these records under section 552.101 of the Government Code and *Reporters Committee*.<sup>2</sup>

You also claim that the responsive documents include information made confidential by section 772.318 of the Health and Safety Code. Section 772.318 makes confidential "current telephone numbers of subscribers and the addresses associated with the numbers [.]” *Id.* § 772.318(a), (c). In addition, you have marked motor vehicle information that you claim is excepted from disclosure under section 552.130. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

The information you have marked as confidential is not responsive to the request; therefore, this decision does not address such information.

In summary, to the extent the department maintains responsive records in which the named individual is identified as a suspect, arrestee, or offender, the department must withhold these records under section 552.101 of the Government Code and *Reporters Committee*. With regard to any responsive documents not protected under section 552.101 and *Reporters Committee*, the department must release the information.

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.

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<sup>2</sup>As *Reporters Committee* is dispositive, we do not address the department's other claims for this information.

*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,



Heather Pendleton Ross  
Assistant Attorney General  
Open Records Division

HPR/sdk

Ref: ID# 175500

Enc: Submitted documents

c: Mr. Jason Sickles  
CBS 11  
10111 North Central Expressway  
Dallas, Texas 75231  
(w/o enclosures)