



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 1, 2003

Lieutenant Arturo Valdez
Central Record Division
McAllen Police Department
P.O. Box 220
McAllen, Texas 78502-0220

OR2003-2202

Dear Lt. Valdez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178632.

The McAllen Police Department (the "department") received a request for police reports relating to two named individuals. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common-law right to privacy. Information must be withheld from disclosure under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency is asked to compile criminal history information that pertains to a particular individual, the compiled information takes on a character that implicates that 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 this instance, the request is for all police reports relating to family violence that involve the first named individual and all police reports that involve the second individual. Thus, this request for information implicates these individuals' privacy rights. Therefore, to the extent that the department maintains any law enforcement information that depicts either of the named individuals as a criminal suspect, arrested person, or defendant, all such information must be withheld from disclosure under section 552.101 of the Government Code in conjunction with *Reporters Committee*.

Section 552.101 also encompasses information that another statute makes confidential. Chapter 261 of the Family Code is applicable to information that relates to reports and investigations of alleged or suspected child abuse or neglect. Section 261.201 of the Family Code provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find that the information that relates to incident number 01-25913 consists of files, reports, records, communications, and working papers used or developed in an investigation made under chapter 261 of the Family Code. *See also* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). You do not inform this office of any rule adopted by the department that would allow the release of the information in question. We therefore assume that no such rule exists. Given that assumption, we conclude that the information that relates to incident number 01-25913 is excepted from disclosure in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code as information made confidential by law.

Next, we address your claim under section 552.108 of the Government Code with regard to the rest of the submitted information. Section 552.108(b) excepts from public disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . (1) release of the internal record or notation would interfere with law enforcement or prosecution [or] (2) the internal record or notation relates to law enforcement only in relation to an

investigation that did not result in conviction or deferred adjudication[.]” This office has stated that certain procedural information may be withheld under section 552.108(b) of the Government Code or its statutory predecessors. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (forms indicating location of off-duty police officers), 413 (1984) (security measures to be used at next execution), 143 (1976) (specific operations or specialized equipment directly related to investigation or detection of crime). To demonstrate the applicability of section 552.108(b), a governmental body must explain, if the requested information does not supply an explanation on its face, how and why release of the requested information would interfere with law enforcement and crime prevention. *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320, 327(Tex. App.—Austin 2002, no pet. h.) (Section 552.108(b)(1) protects “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.”); Open Records Decision Nos. 562 at 10 (1990), 508 at 4 (1988). Further, section 552.108(b)(1) does not protect information that relates to commonly known policies and techniques. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known).

To prevail on a claim that section 552.108(b)(1) excepts information from public disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement; the determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. *See* Open Records Decision No. 409 at 2 (1984). You have not explained, nor does any of the remaining information reflect on its face, how or why the release of any of this information would interfere with law enforcement or crime prevention. Therefore, we conclude that the department may not withhold any of the remaining information under section 552.108 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state;
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). We have marked driver's license, license plate, vehicle identification and personal identification numbers that appear in the submitted documents. To the extent that the marked information consists of Texas driver's license, license plate, vehicle identification and personal identification numbers, the department must withhold the marked information under section 552.130.

In summary, any law enforcement information maintained by the department that depicts either of the two named individuals as a criminal suspect, arrested person, or defendant must be withheld from disclosure under section 552.101 of the Government Code in conjunction with *Reporters Committee*. The information that relates to incident number 01-25913 must be withheld under section 552.101 in conjunction with section 261.201 of the Family Code. The department must withhold Texas driver's license, license plate, vehicle identification and personal identification numbers under section 552.130. The rest of the submitted 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).

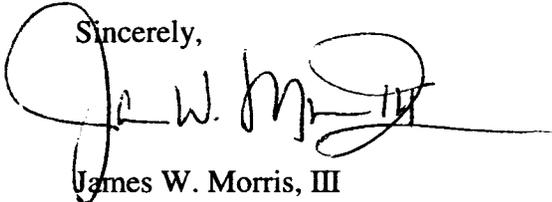
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 178632

Enc: Submitted documents

c: Ms. Sandra Avila
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(w/o enclosures)