



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

April 1, 2003

Mr. Brad Norton  
Assistant City Attorney  
City of Austin - Law Department  
P.O. Box 1546  
Austin, Texas 78767-1546

OR2003-2222

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178653.

The Austin Police Department (the "department") received a request for sixteen specified incident reports relating to a named individual. 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 reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses the doctrine of common-law privacy. 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 Found. v. Texas Indus. Accident Bd.*, 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* 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. 540 S.W.2d at 683.

You contend that the responsive incident reports contain criminal history information that is protected by section 552.101 in conjunction with common-law privacy. 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). Here, we note that the requestor does not ask for a compilation of the named individual's criminal history, but rather seeks sixteen specific incident reports. Therefore, we determine that the department may not withhold any portion of the responsive information under section 552.101 of the Government Code in conjunction with the common-law right of privacy pursuant to the decision in *Reporters Committee*.

Next, you argue that incident report numbers 2000-2171323, 2000-2200709, 2001-3410689, 01-3410854, and 2002-3350539 also contain information that is protected by common-law privacy. Upon review, we agree that these reports contain information that implicates the privacy interest of the named individual who is the subject of the request. We have marked the information that is excepted from disclosure under section 552.101 in conjunction with common-law privacy. We note, however, that the requestor is the father of the individual at issue. A person's authorized representative has a special right of access to information that is excepted from disclosure under laws intended to protect the person's privacy interest as the subject of the information. Gov't Code § 552.023. *Cf.* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual asks governmental body to provide him with information concerning himself). Accordingly, if the department determines that the requestor is the authorized representative of the individual at issue, the department may not withhold the marked information pursuant to section 552.101 in conjunction with common-law privacy.

Next, section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that incident report numbers 2002-4838373, 2001-4552789, 1999-1720671, 1998-4368975, 1996-2921326, 1993-3420640, and CL-2000-1610982 pertain to investigations that concluded in a final result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to these incident reports.

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* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic front page offense and arrest information, you may withhold incident report

numbers 2002-4838373, 2001-4552789, 1999-1720671, 1998-4368975, 1996-2921326, 1993-3420640, and CL-2000-1610982 from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of these reports that is not otherwise confidential by law. Gov't Code § 552.007.

The remaining incident reports contain Texas driver's license numbers and license plate numbers. Section 552.130 of the Government Code 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[.]

If the requestor is the authorized representative of the individual at issue, the department must release this individual's driver's license number and license plate number to the requestor. *See* Gov't Code § 552.023. Otherwise, the department must withhold the individual's driver's license number and license plate number under section 552.130. The other marked driver's license numbers and license plate numbers must be withheld under section 552.130.

In summary, if the requestor is not the authorized representative of the named individual at issue, the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is the individual's authorized representative, the department must release the marked information, and the individual's Texas driver's license number and license plate number, pursuant to section 552.023 of the Government Code.<sup>1</sup> With the exception of basic information, the department may withhold incident report numbers 2002-4838373, 2001-4552789, 1999-1720671, 1998-4368975, 1996-2921326, 1993-3420640, and CL-2000-1610982 pursuant to section 552.108(a)(2) of the Government Code. The remaining Texas driver's license numbers and license plate numbers must be withheld under section 552.130 of the Government Code. The remainder of the submitted information must be released to the requestor.

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<sup>1</sup> We emphasize that, if the department determines that the requestor has a special right of access to the information at issue, and the department receives another request for this information from someone other than this requestor, the department should resubmit the information to this office and ask for another ruling. *See* Gov't Code § 552.023.

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 "D. Saldivar", with a long horizontal flourish extending to the right.

David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 178653

Enc: Submitted documents

c: Mr. Haskell P. Rosenthal  
311 Nixon Drive  
Austin, Texas 78746  
(w/o enclosures)