OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 25, 2003

Mr. Steven D. Monté
Assistant City Attorney
Dallas Police Department
1400 South Lamar Street, #300A
Dallas, Texas 75215-1801

OR2003-2799

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180069.

The Dallas Police Department (the "department") received a request for the personnel file prepared concerning the requestor's application for employment with the department. 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 from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the common law right of privacy, which excepts from disclosure information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). 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). However, because information is excepted in such circumstances in order to protect an individual's privacy interest, a person has a special right to such a compilation regarding herself. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates on grounds that information is considered confidential by privacy principles). Thus, if the requested information includes compilations of records in

which anyone other than the requestor is portrayed as a suspect, defendant, or arrestee, the department must withhold such information under common law privacy as encompassed by section 552.101. *See id.*

Section 552.101 also encompasses laws that make criminal history record information ("CHRI") confidential. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Under chapter 411 of the Government Code, a criminal justice agency may obtain CHRI from the Department of Public Safety ("DPS") or from another criminal justice agency. *Id.* §§ 411.083(b)(1), .087(a)(2), .089(a). However, CHRI so obtained is confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, assuming that you have CHRI in your possession and that it falls within the ambit of these state and federal regulations, you must withhold it from the requestor.

We note, however, that "the information in the DPS [sex offender registration] database, with the exception of that information listed in subsection (b) of [article] 62.08 [of the Code of Criminal Procedures], is specifically deemed to be 'public information,' and is available to any person." Tex. Att'y Gen. Op. Nos. GA-0056 at 1 (2003) (concluding that local government could broadcast on local cable television station certain information about registered sex offender). Thus, with the exception of the information that we have marked, the department must release information it received from this DPS database. *See id.*; *see also* Code Crim. Proc. art. 62.08(b) (listing information in database that is not public).

You also claim that some of the requested information is excepted from disclosure under section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). However, section 552.108 is not generally applicable to the personnel records of law enforcement officers or to information relating to complaints involving law enforcement officers. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *see also* Open Records Decision Nos. 562 at 10 (1990) (predecessor to section 552.108(b) inapplicable to employment information in police officer's file), 361 at 2-3 (1983) (statutory predecessor to section 552.108(b) inapplicable to background information collected on unsuccessful applicant for employment with sheriff's department). Therefore, the department may not withhold any of the requested information under section 552.108.

In summary, to the extent the requested information contains CHRI or includes compilations of records in which anyone other than the requestor is portrayed as a suspect, defendant, or arrestee, such information must be withheld. All other information must be released to this requestor.[1]

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).

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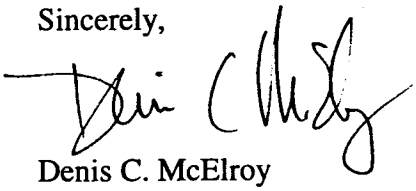
[1]We note that the remaining documents include information that would ordinarily be withheld under laws and exceptions intended to protect the requestor's privacy. However, as the subject of such information, the requestor has a special right of access to it. *See* Gov't Code § 552.023(b). If the department receives a request for this information from someone other than the requestor, it must seek another ruling from this office.

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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

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Ref: ID# 180069

Enc. Submitted documents