



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 15, 2003

Mr. Steven D. Monté
Assistant City Attorney
Criminal Law & Police Division
City of Dallas
1400 South Lamar Street #300A
Dallas, Texas 75215-1801

OR2003-4895

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# 184503.

The Dallas Police Department (the "Department") received a request for copies of "all reports," some specified, pertaining to six individuals, including the requestor. You inform us that the Department has released a portion of the responsive information to the requestor. However, you assert the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We considered the exception you claim.

Initially, we address your obligations under section 552.301 of the Government Code. Section 552.301(b) provides that a governmental body must ask for a decision from this office and state the applicable exceptions 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 must 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 information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. In this case, the Department received the present request for information on March 11, 2003. The Department should have submitted a request for an attorney general

opinion no later than March 25, 2003. The Department should have forwarded all other required documentation to this office by April 1, 2003. We received your facsimile requesting an opinion from our office and your supporting documentation on May 14, 2003. Consequently, we conclude the Department failed to comply with the requirements of sections 552.301(b) and 552.301(e) of the Government Code.

According 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 information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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). Normally, a compelling interest exists when some other source of law makes the information confidential or third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Section 552.107, a discretionary exception under the Act, does not qualify as a compelling reason to withhold information from the public. *See* Open Records Decision No. 630 at 4 (1994) (governmental body may waive Gov't Code § 552.107(1)); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). However, because the application of section 552.101 of the Government Code qualifies as a compelling reason to overcome the presumption of openness, we will address your arguments under this provision despite your failure to comply with section 552.301.

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 provision encompasses the doctrine of common-law privacy, which protects information when (1) it contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the information. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a governmental entity compiles criminal history information pertaining to a particular individual, the compiled information takes on a character that implicates the individual's right of 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, the requestor seeks "all reports" about named individuals. Thus, we believe the requestor has asked the Department to compile criminal history information, thereby implicating the individuals' right to privacy to the extent they are identified as suspects, arrestees, or defendants. *See id.* Thus, to the extent it exists, the Department must withhold information identifying the named individuals as suspects, arrestees, or defendants under section 552.101 of the Government Code in conjunction with common-law privacy and *Reporters Committee*.

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).

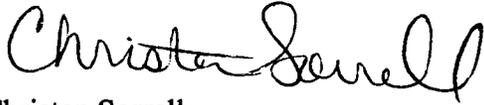
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 that reads "Christen Sorrell". The signature is written in a cursive style with a large, looping "S" at the end.

Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 184503

Enc: Submitted documents

c: Mr. Joseph Webb
932 South Ewing
Dallas, Texas 75203
(w/o enclosures)