



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

July 18, 2003

Sheriff Larry Lynch  
McLennan County  
Agriplex Drug Task Force  
P.O. Box 1820  
Waco, Texas 76703-1820

OR2003-4996

Dear Sheriff Lynch:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184528.

The Agriplex Drug Task Force (the "task force") received a request for all information regarding a named individual.<sup>1</sup> The McLennan County Sheriff's Department (the "department") received a request from the same requestor for all information regarding six named individuals. You claim that all of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note that some of the submitted documents are not responsive to the instant request for information. We have marked these documents, which the department and task force need not release in response to this request.

We next note that a portion of the requested information is the identical information that was the subject of a previous ruling from this office. In Open Records Letter No. 2003-3176 (2003), we concluded that the department and the task force were required to withhold some of the information submitted in that instance under section 552.101 of the Government Code, and to release the remainder of the submitted information to the requestor. Therefore, as we

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<sup>1</sup>We rely on your representation as to the nature of the request, as you did not submit a copy of the request letter to this office.

<sup>2</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.

understand you to assert that the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, we conclude that the department and task force must rely on our decision in Open Records Letter No. 2003-3176 (2003) with respect to the information requested in this instance that was previously ruled upon in that decision.<sup>3</sup> See Gov't Code § 552.301(f); Open Records Decision No. 673 (2001). To the extent that the information requested in this instance was not the subject of the ruling in Open Records Letter No. 2003-3176 (2003), we will address your arguments.

However, we must next address your obligations under section 552.301 of the Government Code. 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 information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). You did not, however, submit to this office a copy of the written request for information received by the task force on May 6, 2003. You also failed to timely submit both a copy of the written request for information dated May 19, 2003 and a copy of the specific information requested or representative samples of the information. Consequently, you have failed to comply the section 552.301 in requesting this decision from us.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301(e) results in the legal presumption that the requested 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). Compelling reasons exist when the information is made confidential by law or affects the interest of a third party. Open Records Decision No. 630 at 3 (1994). In this instance, you assert that the remaining requested information is excepted from disclosure under

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<sup>3</sup>The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673 (2001).

section 552.101 of the Government Code. Accordingly, we will address your claim under that exception to disclosure.

With regard to the submitted search warrant affidavit, an executed search warrant affidavit is made public by statute. *See* Code Crim. Proc. art. 18.01(b). As the related search warrant has been executed, the submitted search warrant affidavit must be released in its entirety.

Next, we address the applicability of your claimed exception to the remaining requested 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." For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. 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 information concerning several named individuals. In this case, we believe that the named individuals' right to privacy has been implicated. Thus, where any one of the named individuals is listed as a possible suspect, arrestee, or defendant in a case, we conclude that the department and the task force must withhold this information under common-law privacy as encompassed by section 552.101 of the Government Code. *See id.*

In summary, we have marked the nonresponsive documents, which the department and task force need not release in response to this request. The department and task force must rely on our decision in Open Records Letter No. 2003-3176 (2003) with respect to the information requested in this instance that was previously ruled upon in that decision. As the submitted search warrant affidavit is made public by statute, it must be released in its entirety. Where any one of the named individuals is listed as a possible suspect, arrestee, or defendant in a case, we conclude that the department and the task force must withhold this information under common-law privacy as encompassed by section 552.101

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

. CN/seg

Ref: ID# 184528

Enc. Submitted documents

c: Ms. Cindy V. Culp  
Waco Tribune Herald  
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(w/o enclosures)