



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

July 29, 2003

Ms. Janis Kennedy Hampton
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2003-5179

Dear Ms. Hampton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184940.

The Bryan Police Department (the "department") received a request for "all incident/offense reports[,] supplemental reports, investigative reports, statement, photographs and video tapes" concerning a particular case; "all offense reports, incident reports, supplemental reports and investigative reports" involving two named individuals during a specified time period; and "all offense reports, incident reports, supplemental reports, investigative reports, statements, and photographs" concerning a particular address during a specified time period. You state that you have released some information to the requestor but claim that other 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.

Initially, we note that you have submitted information concerning reports that do not fall within the time period specified in the second and third categories of the request. Because this information is not encompassed by the request, it is not responsive, and we do not address it in this ruling. *See generally* Gov't Code § 552.301 (indicating that this office has authority to render decisions only with respect to specific information sought by written request).

We turn now to your arguments concerning the responsive information. We first address the second portion of the request, which seeks all reports concerning two named individuals. 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 to privacy, which protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a

reasonable person and the public has no legitimate interest in it. *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, information that refers to an individual solely as a victim, witness, or involved person is not private under *Reporters Committee* and may not be withheld under section 552.101 on that basis. In addition, when a requestor asks for information relating to a particular incident, the request does not implicate the privacy concerns expressed in *Reporters Committee* because complying with the request does not require the governmental body to compile unspecified records.

In this instance, the requestor asks the department for all records concerning two named individuals. Thus, this request implicates the named individuals' right to privacy. However, because neither of the named individuals is portrayed as a suspect, defendant, or arrestee in any of the submitted reports, none of them may be withheld under section 552.101 of the Government Code on the basis of the holding in *Reporters Committee*.

You also contend that section 552.108(a)(2) applies to the submitted information. This section 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 the information you seek to withhold under this exception pertains to cases that "did not result in conviction or deferred adjudication." Based on this representation, we agree that section 552.108(a)(2) is applicable to this information.

However, section 552.108 does not except 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). Thus, the department must release from each of the responsive reports the types of information that are considered to be front page report information, whether or not such information is actually located on the front page of an offense report. See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*, including detailed description of offense); see also Open Records Decision No. 649 at 3 (1996) (discussing computer aided dispatch reports). Although section 552.108(a)(2) authorizes the department to withhold the remainder of the submitted information, it may choose to release all or part of it that is not otherwise confidential by law. See Gov't Code § 552.007.

In addition to the reports themselves, you have submitted a list that refers to those reports and consists primarily of basic information. We note, however, that this list includes motor vehicle record information. Section 552.130 of the Government Code requires the

department to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Gov't Code § 552.130(a)(1). We have marked the information that the department must withhold pursuant to section 552.130.

We also note that the list contains a social security number. Section 552.101 also encompasses amendments to the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), that make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, with the exception of basic information, the department may withhold the submitted reports pursuant to section 552.108(a)(2) of the Government Code. The marked motor vehicle record information must be withheld pursuant to section 552.130. The social security number contained in the submitted records must be withheld if obtained or maintained pursuant to a law enacted on or after October 1, 1990. The remainder of the list 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

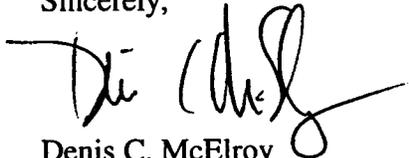
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/sdk

Ref: ID# 184940

Enc. Submitted documents

c: Mr. Tom Reed
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(w/o enclosures)