



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 11, 2003

Mr. Brad Norton  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8845

OR2003-5578

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# 185667.

The Austin Police Department (the "department") received a request for information relating to a specified street address. 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 have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common-law right to privacy. Information must be withheld from disclosure under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency is asked to compile criminal history information that pertains to a particular individual, the compiled information takes on a character that implicates that 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). You assert that the present request for information implicates privacy interests. We note, however, that this request is for information that relates to a street address, rather than to any particular individual.

Therefore, none of the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy under *Reporters Committee*.

You also raise section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to that information. *See* Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You have submitted ten incident reports that you claim are excepted from disclosure under section 552.108(a)(1). You assert that these incident reports relate to pending criminal investigations and that their release would interfere with the detection, investigation, or prosecution of crime. We note, however, that the submitted incident reports pertain to alleged criminal conduct that occurred as long ago as 1994. Report number 94-2171224 relates to a terroristic threat that allegedly occurred on August 5, 1994. A terroristic threat can constitute either a misdemeanor or a felony. *See* Penal Code 22.07. In any event, however, criminal charges must be brought within three years of the date of the commission of the alleged terroristic threat. *See* Crim. Proc. Code arts. 12.01, 12.02. Similarly, report numbers 01-0100056 and 01-4033717 relate to criminal mischief that allegedly occurred on January 10, 2001, and January 13, 2001, respectively. The submitted reports reflect that both instances of criminal mischief were misdemeanor offenses. *See* Penal Code 28.03. A misdemeanor must be prosecuted within two years of the date of the alleged offense. *See* Crim. Proc. Code art. 12.02. Report number 97-1761301 relates to an arrest that occurred on June 25, 1997 for an alleged parole violation and a failure to identify. Failure to identify is a misdemeanor and must be prosecuted within two years of the date of the alleged offense. *See* Penal Code § 38.02; Crim. Proc. Code art. 12.02. You do not inform us that any of the alleged offenses to which these four reports pertain was the subject of any pending criminal prosecution on the date of the department’s receipt of this request for information. We therefore find that you have not demonstrated that section 552.108(a)(1) of the Government Code is applicable to any of these four reports. *See Houston Chronicle Publ’g 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) (court delineates law enforcement interests that are present in active cases). Accordingly, the department may not withhold report numbers 94-2171224, 01-0100056, 01-4033717, or 97-1761301 under section 552.108.

With regard to the rest of the submitted information, we note that report numbers 01-2371463 and 02-1620028 relate to arrests of the same individual during August, 2001, and June, 2002. Likewise, report numbers 01-4521951, 02-3412034, 03-4002663, and 03-4541727 relate to the same individual as the suspect or arrested person and involve

alleged offenses that occurred as recently as April, 2003. Therefore, based on your representations and our review of these six reports, we conclude that section 552.108(a)(1) is applicable to report numbers 01-2371463, 02-1620028, 01-4521951, 02-3412034, 03-4002663, and 03-4541727.

We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The department must release basic information with regard to report numbers 01-2371463, 02-1620028, 01-4521951, 02-3412034, 03-4002663, and 03-4541727, including detailed descriptions of the offenses involved, even if this information does not literally appear on the front page of the report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the remaining contents of report numbers 01-2371463, 02-1620028, 01-4521951, 02-3412034, 03-4002663, and 03-4541727 under section 552.108(a)(1). We note that the department has discretion under section 552.108 to release additional information that is not otherwise made confidential by law. *See* Gov’t Code § 552.007; Open Records Decision No. 177 (1977) (law enforcement exception does not prohibit release of information).

Lastly, we note that report numbers 01-0100056 and 97-1761301 contain Texas driver’s license information. Section 552.130 of the Government Code excepts from required public disclosure 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 Texas driver’s license information that the department must withhold under section 552.130.

In summary, the department may withhold report numbers 01-2371463, 02-1620028, 01-4521951, 02-3412034, 03-4002663, and 03-4541727 under section 552.108(a)(1) of the Government Code, except for the basic information in those reports that must be released under section 552.108(c). The department must withhold the marked Texas driver’s license information in report numbers 01-0100056 and 97-1761301 under section 552.130. The department must release the rest of the submitted information.

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).

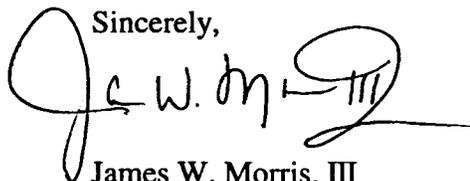
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 "J. W. Morris, III". The signature is stylized with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 185667

Enc: Submitted documents

c: Boxholder  
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(w/o enclosures)