



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 14, 2003

Mr. T. Daniel Santee, II
First Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604

OR2003-5691

Dear Mr. Santee:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 185947.

The Abilene Police Department (the "Department") received a request for all calls, records, and arrests involving two named individuals from January 2000 through the present. You assert the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We reviewed the information you submitted and considered the exceptions you claim.

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. Common-law privacy 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). Here, by requesting information about named individuals from January 2000 through the present, 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*.

Next, we address your claim under section 552.108(a)(2) of the Government Code, which excepts information concerning an investigation that concluded in a result other than conviction or deferred adjudication from required public disclosure. *See Gov't Code* § 552.108(a)(2). 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 inform us that the information at issue pertains to an investigation that did not result in a conviction or deferred adjudication. Therefore, we conclude section 552.108(a)(2) applies in this instance.

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 Company 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), which includes a detailed description of the offense. *See Open Records Decision No. 127 (1976)* (summarizing types of information considered basic information). Thus, with the exception of the basic front page offense information, the Department may withhold the information we have marked under section 552.108(a)(2) of the Government Code.

In summary, to the extent it exists, the Department must withhold information identifying the named individuals as suspects, arrestees, or defendants under section 552.101 in conjunction with common-law privacy and *Reporters Committee*. With the exception of basic information, the Department may withhold the information we have marked under section 552.108(a)(2) of the Government Code.

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).

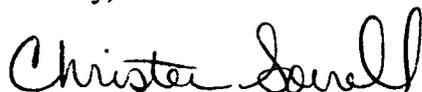
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 185947

Enc: Submitted documents

c: Mr. John Foller
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Cross Plains, Texas 76443
(w/o enclosures)