



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2003

Mr. J. David Dodd, III
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2003-6633

Dear Mr. Dodd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188284.

The Allen Police Department (the "department"), which you represent, received a request for "incident/offense reports, Arrest Call Sheets, Citations and 911 calls" for two specified addresses involving several named individuals and certain periods of time. You claim that the requested information is excepted from disclosure pursuant to sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that some of the requested information is excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy.¹ Information must be withheld under the common-law right to privacy when (1) it is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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 Committee for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor partly seeks unspecified investigative records in which specified individuals are identified. Thus, the request requires the department to compile information relating to these individuals. Based on the reasoning set out in *Reporters Committee*, we conclude that such a compilation implicates the specified individuals' rights to privacy to the extent that it includes investigations where the named

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See Gov't Code* § 552.101. Section 552.101 encompasses information that is protected from disclosure by the common-law right to privacy.

individuals were suspects, arrestees, or defendants in a case. Accordingly, we conclude that to the extent that the department maintains responsive information that reveals that any of the specified individuals were suspects, arrestees, or defendants in a case, such information must be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

We note that portions of the submitted information, which we have marked, are excepted from disclosure pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. Section 552.101 also encompasses information that is made confidential by other statutes. Chapter 261 of the Family Code is applicable to information that relates to reports and investigations of alleged or suspected child abuse or neglect. Section 261.201 provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Based on our review of the submitted information, we find that the marked portions of this information concern a report of alleged or suspected abuse under chapter 261. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). We assume that the department has not adopted a policy that would allow for the release of this information in this instance. Accordingly, we conclude that the department must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

You claim that the remaining information at issue is excepted from disclosure pursuant to section 552.108 of the Government Code. We note that section 552.108(a)(1) provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) as an exception to disclosure of requested information must demonstrate, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov't Code §§ 552.108(a), (b), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the release of the submitted information would interfere with the further investigation and prosecution of the crime associated with the information. Based on your representation and our review of the remaining information at issue, we find that the release of most portions of this information "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a). Thus, we find that section 552.108(a)(1) is applicable to this information.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* 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). *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public, including detailed description of offense). Accordingly, with the exception of basic information that must be released to the requestor, we conclude that the department may withhold the remaining information at issue pursuant to section 552.108(a)(1) of the Government Code. We note, however, that the department maintains the discretion to release all or part of this particular information that is not otherwise confidential by law. *See* Gov't Code § 552.007.²

In summary, to the extent that the department maintains responsive information that reveals that any of the specified individuals were suspects, arrestees, or defendants in a case, such information must be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The department must withhold the information that we have marked pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. With the exception of basic information that must be released, the department may withhold the remaining information at issue pursuant to section 552.108(a)(1) 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

² Because we base our ruling with regard to this information on section 552.108 of the Government Code, we need not address the applicability of your remaining claimed exception to disclosure. We note for your information that "basic information" generally may not be withheld under section 552.103 of the Government Code. *See* Open Records Decision Nos. 597 (1991), 362 (1983).

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).

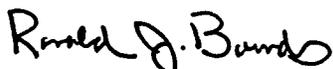
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 188284

Enc. Marked documents

c: Mr. Beau Myatt
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(w/o enclosures)