



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 10, 2003

Ms. Linda L. Sjogren  
Assistant City Attorney  
City of San Angelo  
P.O. Box 1751  
San Angelo, Texas 76902

OR2003-7209

Dear Ms. Sjogren:

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# 189171.

The San Angelo Police Department (the "Department ") received a request for incident reports from 2000 to the present involving the requestor and three other named individuals. You state that the Department has released some responsive information to the requestor. You claim that the remaining requested information, or portions thereof, is excepted from disclosure under section 552.101 of the Government Code. We reviewed the information you submitted and considered the exception you claim.

Initially, we address the Department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed and claim any applicable exceptions not later than the tenth business day after the date of receiving the written request for information. *See* Gov't Code § 552.301(b). You indicate that the Department received the written request for information on July 21, 2003. Thus, the Department should have submitted a request for an attorney general decision no later than August 4, 2003. However, your letter requesting a decision from our office and your supporting documentation has a postmark of August 5, 2003. Consequently, we conclude that the Department failed to comply with the procedural requirements of section 552.301 in requesting this decision.

According to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. A governmental body must release information presumed public under section 552.302, unless it demonstrates a compelling reason to withhold the information. *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). Normally, a compelling interest exists when some other source of law makes the information confidential or third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because the section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address your arguments under this exception.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Further, where an individual's criminal history information has been compiled by a governmental entity, the compiled information takes on a character that implicates the 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). In this instance, the requestor seeks all incident reports pertaining to himself and three other named individuals for a specified time period. Thus, we find that the request requires the Department to compile information regarding these individuals. Based on the reasoning set out in *Reporters Committee*, such a compilation implicates the individuals' right to privacy to the extent that it consists of records in which any of the named individuals is portrayed as a suspect, arrestee, or defendant. However, we note section 552.023 states that a person or a person's authorized representative has a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person's privacy interest. *See* Gov't Code § 552.023. Accordingly, to the extent that the Department maintains responsive information that reveals that the requestor is a suspect, arrestee, or defendant, the Department must release this information to the requestor, unless some other exception is applicable to any such information. To the extent that the Department maintains information in which any of the other named individuals is portrayed as a suspect, arrestee, or defendant, we conclude that the Department must withhold such information, in its entirety, under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, we note that this office has found common-law privacy also protects the following types of information: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). After reviewing the information you have highlighted in Exhibit B, we agree that this information is protected under common-law privacy. Therefore, the Department must withhold the highlighted information in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the Department maintains responsive information that reveals that the requestor is a suspect, arrestee, or defendant, the Department must release this information to the requestor in accordance with section 552.023 of the Government Code. To the extent the Department maintains information in which any of the other named individuals is portrayed as a suspect, arrestee, or defendant, the Department must withhold such information, in its entirety, pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The Department must withhold the information you have highlighted in Exhibit B under section 552.101 in conjunction with common-law privacy. The Department must release the remaining submitted information to the requestor.<sup>1</sup>

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

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<sup>1</sup>We note that the submitted information contains the requestor's driver's license number. A driver's license number is ordinarily excepted from disclosure under section 552.130 of the Government Code. However, pursuant to section 552.023, the requestor has a special right of access to his driver's license number. Because some of the information to be released to the requestor is confidential with respect to the general public, in the event the Department receives another request for this information from someone other than this requestor or his authorized representative, the Department must request another decision from this office.

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# 189171

Enc: Submitted documents

c: Mr. Keith Patterson  
3587 Shadyhill Drive  
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(w/o enclosures)