



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 4, 2003

Mr. Craig Stoddart  
Assistant Criminal District Attorney  
Rockwall County  
1101 Ridge Road, Suite 105  
Rockwall, Texas 75087

OR2003-7900

Dear Mr. Stoddart:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190420.

The Rockwall County Criminal District Attorney's Office (the "district attorney") received a request for information pertaining to a particular assault case and "any documentation (i.e. Offense Reports, a copy of any documents included in their files, history of other complaints of violent behavior or lawsuits filed, etc., etc.)" concerning three named individuals. You claim that some of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.<sup>1</sup>

Initially, we note that the request seeks unspecified criminal records involving three 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.*

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<sup>1</sup>We assume that the sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

*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. We also note that information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common law privacy and *Reporters Committee*. Cf. Gov't Code § 411.082(2)(B).

In this instance, the requestor asks the district attorney for all records concerning three named individuals. This aspect of the request implicates the named individuals' right to privacy. However, the requestor also seeks information relating to a particular incident, a request that does not implicate the privacy concerns discussed in *Reporters Committee*. Therefore, to the extent the district attorney maintains records, other than those that pertain to the specified incident or routine traffic violations, in which any of the named individuals is portrayed as a suspect, defendant, or arrestee, it must generally withhold such records pursuant to section 552.101 and the common law privacy concerns expressed in *Reporters Committee*. However, information pertaining to the specifically requested incident and routine traffic violations is not considered confidential under the holding in *Reporters Committee* and may not be withheld under section 552.101 on that basis.

Although section 552.101 and common law privacy generally require the district attorney to withhold information pertaining to unspecified incidents in which any of the three named individuals is portrayed as a suspect, defendant, or arrestee, the exceptions found in the Public Information Act do not apply to information that is made public by other statutes. See Open Records Decision No. 525 (1989) (statutory predecessor). The 78th Legislature recently amended article 15.26 of the Code of Criminal Procedure to add language providing:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is *public information*, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Act of May 31, 2003, 78th Leg., R.S., ch. 390, § 1, Tex. Sess. Laws Serv. 1631 (to be codified as amendment to Code Crim. Proc. art. 15.26) (emphasis added). Because arrest warrants and supporting affidavits are made public under article 15.26, they may not be withheld under section 552.101 and the common law privacy concerns expressed in *Reporters Committee*. See ORD 525. Therefore, you must release the marked arrest warrant and supporting affidavit to the requestor.

We turn now to information pertaining to the specifically requested incident. Initially, we note that this information includes medical records. Medical records are made confidential under the Medical Practice Act (the "MPA"), Occ. Code §§ 151.001-165.160. Section 159.002 of the Occupations Code provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). They must be released on the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). For your convenience, we have marked the documents that are medical records subject to the MPA.

We now address your arguments under section 552.108 of the Government Code for the remaining information regarding this incident. Section 552.108(a)(2) 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 case concerning the specifically requested incident was referred to the district attorney and was "rejected." Based on your statements, we understand you to represent that the case concluded in a final result other than conviction or deferred adjudication. On the basis of this understanding, we agree that section 552.108(a)(2) is applicable.

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 district attorney must release the types of information that are considered to be front page report information, including a detailed description of the offense, regardless of whether 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*). Although section 552.108(a)(2) authorizes the district attorney to withhold the remaining information regarding this incident, it may choose to release all or part of it that is not otherwise confidential by law. *See* Gov't Code § 552.007.

In summary, to the extent the district attorney maintains records, other than those regarding the specifically referenced incident or routine traffic violations, in which any of the three named individuals is portrayed as a suspect, defendant, or arrestee, it must generally withhold such records pursuant to section 552.101 and common law privacy. However, the marked arrest warrant and supporting affidavit are made public by article 15.26 and must be released. Medical records contained in the information pertaining to the specifically requested incident may only be released in accordance with the MPA. With the exception of basic information about the incident, which must be released, the remaining information concerning the incident may be withheld pursuant to section 552.108(a)(2).

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).

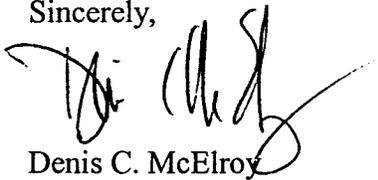
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

Ref: ID# 190420

Enc. Submitted documents

c: Mr. J. Mark Jones  
1524 Shady Grove Circle  
Rockwall, Texas 75032  
(w/o enclosures)