



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 15, 2003

Ms. Julie Joe
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2003-9002

Dear Ms. Joe:

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# 192722.

The Travis County Sheriff's Office (the "sheriff's office") received a request for "any and all information" related to two named individuals. 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 reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common law privacy. 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 Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, because the requestor seeks all incident reports pertaining to two named individuals, we find that the request requires the sheriff's office to compile information regarding these individuals. Based on the reasoning set out in *Reporters Committee*, such a compilation implicates the individual's right to privacy to the extent that it consists of records in which the named individual 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*. In this case,

you inform us that the requestor represents one of the individuals at issue. Accordingly, to the extent that the sheriff's office maintains responsive information that reveals that the requestor's client is a suspect, arrestee, or defendant, the sheriff's office must release such information to the requestor, unless some other exception is applicable to any such information. To the extent that the sheriff's office maintains responsive information that reveals that the other named individual is a possible suspect, arrestee, or criminal defendant, we conclude that you must withhold this information under common law privacy as encompassed by section 552.101 of the Government Code. *See id.*

Next, you argue that portions of the submitted information are excepted from disclosure under section 552.108(a)(1) and (2) of the Government Code. Section 552.108(a) provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). On the other hand, 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. *See Gov't Code §§ 552.108(a)(2), .301(e)(1)(A).*

You have marked certain records that you assert relate to a pending criminal case. Based upon this representation, we conclude that the release of the information that you have marked would interfere with the detection, investigation, or prosecution of crime. *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). Therefore, we conclude that section 552.108(a)(1) is applicable to these reports. You further state that the remaining submitted records pertain to cases that concluded in a result other than conviction or deferred

adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to these records, which you have marked.

We note, however, that basic information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *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); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be basic front page offense report information, even if this information is not actually located on the front page of the offense report. Although section 552.108 authorizes you to withhold the remaining submitted information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.¹

In summary, to the extent that the sheriff's office maintains responsive information that reveals that the requestor's client is a suspect, arrestee, or defendant, the sheriff's office must release such information to the requestor, unless some other exception is applicable to any such information. To the extent that the sheriff's office maintains responsive information that reveals that the other named individual is a possible suspect, arrestee, or criminal defendant, we conclude that the sheriff's office must withhold this information under common law privacy as encompassed by section 552.101 of the Government Code. With the exception of basic information, the remaining submitted information may be withheld under section 552.108.²

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

¹As our ruling is dispositive, we do not address your remaining claims.

²Some of the information marked for release contains or consists of confidential information that is not subject to release to the general public. *See* Gov't Code § 552.352. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023. Because some of the information is confidential with respect to the general public, if the sheriff's office receives a future request for this information from a person other than the requestor, the individual whose information is confidential, or that individual's authorized representative, the sheriff's office should again seek our decision.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 192722

Enc. Submitted documents

c: Ms. Gloria A. Rodriguez
Piper & Powers, L.L.P.
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(w/o enclosures)