



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2003

Mr. Miles K. Risley
Senior Assistant City Attorney
City of Victoria - Legal Department
P.O. Box 1758
Victoria, Texas 77902-1758

OR2003-9267

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193196.

The City of Victoria (the "city") received a request for police reports involving the requestor and another named individual from the time period of September, 1996 through October, 2003, including photographs. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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," and encompasses the doctrine of common-law privacy. Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and that is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (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 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, 780 (1989) ("[A] third party's request for law enforcement records or information about a private citizen

can reasonably be expected to invade that citizen's privacy.") The privacy interest in criminal history record information has long been recognized by Texas courts and in open records decisions issued by this office. *See, e.g., Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 188 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (release of individual's criminal history record compiled by city police department implicates privacy interests of individual) (construing statutory predecessor to section 552.101); Open Records Decision Nos. 616 (1993), 565 (1990), 354 (1982), 252 (1980), 216 (1978), 183 (1978), 144 (1977), 127 (1977).

In this instance, the requestor specifically asks for all police reports pertaining to herself and another named individual. Thus, in part, this request requires the city to compile the criminal history of the named individual. Accordingly, the present request implicates the doctrine of common-law privacy. Therefore, to the extent the city maintains law enforcement records depicting that named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. *See Reporters Comm.*, 489 U.S. 749. However, we note that under section 552.023 of the Government Code, 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 the department maintains responsive information that depicts that the requestor as a suspect, arrestee, or defendant, the department may not withhold such information from the requestor on the basis of common-law privacy.

With respect to the named individual specified in the request, we note that a portion of the submitted information makes reference to this individual as a complainant, rather than as a suspect, arrestee, or criminal defendant. In addition, a portion of the submitted information does not indicate that a crime is being alleged. Information that does not depict an individual as a suspect, arrestee, or criminal defendant, and information that does not pertain to alleged criminal activity, does not comprise criminal history information. Accordingly, these records, which we have marked, are not part of a compilation of the named individual's criminal history. Thus, the city may not withhold the information we have marked pursuant to section 552.101 and *Reporters Committee*.

We note, however, that the information we have marked contains a small amount of information that is protected by common-law privacy on another basis. *See Industrial Found.*, 540 S.W.2d 668 (type of information protected by privacy includes 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); *see also* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 440 (1986) (identities of victims of sexual abuse). The city must withhold the information we have marked pursuant to section 552.101 in conjunction with common-law privacy.

In summary, to the extent the city maintains law enforcement records that depict the named individual at issue as a possible suspect, arrestee, or criminal defendant, such information is protected by common-law privacy and must be withheld pursuant to section 552.101 of the Government Code and the decision in *Reporters Committee*. We have marked information that must be withheld under section 552.101 in conjunction with common-law privacy. The remainder of the submitted information must be released to the requestor.

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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 193196

Enc: Submitted documents

c: Ms. Susan Holloway
106 Suzanne Lane
Victoria, Texas 77901
(w/o enclosures)