



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 8, 2004

Mr. Ken Johnson
Assistant City Attorney
City of Waco - Legal Services
P.O. Box 2570
Waco, Texas 76702-2570

OR2004-0160

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193929.

The Waco Police Department (the "department") received a request for arrest information regarding a named individual and information regarding a specified incident involving the named individual and the requestor. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108 and 552.130 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," and encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency is asked to compile a particular individual's criminal history information, 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 part, the present request asks for all arrest records concerning a named individual. We find that this portion of the request requires the department to compile the individual's criminal history. Accordingly, we find that this portion of the request implicates the named individual's common-law right of privacy. We therefore determine that, to the extent the department maintains records depicting the named individual as a suspect, arrestee, or criminal defendant, with the exception of records pertaining to the incident specified in the request, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, that the submitted documents contain information that is responsive to the portion of the request regarding a specified incident involving the requestor and the named individual. Because the requestor specifically asks for information about this incident, such information is not part of a compilation of the criminal history of the individual at issue. Accordingly, this information is not protected by common-law privacy pursuant to the decision in *Reporters Committee* and may not be withheld under section 552.101 on that basis.

You claim that offense report number 03-15463, the report pertaining to the incident specified in the request, is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 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), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that offense report number 03-15463 relates to an active and pending criminal investigation. Based on your representations and our review, we determine that the release of offense report number 03-15463 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).

We note, however, that 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*, 531 S.W.2d 177; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, you must release the types of information that are considered to be front page information from offense report number 03-15463, even if this information is not actually located on the front page of the report. Although section 552.108(a)(1) authorizes you to withhold the remainder of offense report number 03-15463 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.

In summary, to the extent the department maintains records depicting the individual named in the present request as a suspect, arrestee, or criminal defendant, with the exception of

offense report number 03-15463, the department must withhold such information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold offense report number 03-15463 pursuant to section 552.108(a)(1) of the Government Code; however, basic information from offense report number 03-15463 must be released to the requestor. Based on these findings, we do not reach your other arguments against disclosure.

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,

A handwritten signature in black ink, appearing to read 'David R. Saldivar', written in a cursive style.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 193929

Enc: Submitted documents

c: Ms. Heather Burns
1224 Calumet Street
Waco, Texas 76704
(w/o enclosures)