



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 26, 2004

Ms. Dianne Eagleton
Manager, Records Division
North Richland Hills Police Department
P.O. Box 820609
North Richland Hills, Texas 76182-0609

OR2004-1436

Dear Ms. Eagleton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199500.

The North Richland Hills Police Department (the "department") received a request for all police reports relating to a named individual. 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 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception 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. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). However, 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 department for all records concerning a named individual. In so doing, the request implicates this individual's right to privacy. However, because most of the information relates to routine traffic violations, it is not excepted from public disclosure under section 552.101 and *Reporters Committee*. We have marked the information that is private.

Next, we address the department's section 552.108 claim for the remaining information. The department asserts the information is excepted from disclosure under section 552.108(b)(3) because it is criminal history information. Section 552.108(b)(3) excepts from public disclosure a law enforcement agency's internal record that is prepared by a prosecutor in anticipation of criminal litigation or that reflects the mental impressions or legal reasoning of a prosecutor. Gov't Code § 552.108(b)(3). Section 552.108(b)(3) does not protect criminal history information. Because the department failed to demonstrate the applicability of section 552.108(b)(3), the department may not withhold the information under this provision.

However, the remaining information contains information subject to sections 552.101 and 552.130 of the Government Code. Section 552.130 excepts from public disclosure information relating to a Texas motor vehicle title or registration. Thus, the department must withhold the information we have marked under section 552.130. In addition, the department must withhold the social security number under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994).

In summary, to the extent the responsive information includes records in which the named individual is a suspect or an arrestee, the department must withhold such information pursuant to section 552.101 and common-law privacy. The department must withhold the Texas motor vehicle information under section 552.130 and the social security number if federal law applies. The remaining submitted information must be released.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 199500

Enc. Marked documents

c: Ms. Donna Womack
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(w/o enclosures)