



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 3, 2004

Mr. Gary A. Scott  
Assistant City Attorney  
City of Conroe  
P. O. Box 3066  
Conroe, Texas 77305

OR2004-3578

Dear Mr. Scott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200821.

The Conroe Police Department (the "department") received a request for "all reports involving [the requestor's minor daughter] and [the requestor]" as well as calls to a particular address during a specified period. You claim that the requested information is excepted from disclosure under sections 552.101 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." This section encompasses the common law right of privacy, which excepts from disclosure information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. 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).

In this instance, the requestor asks the department to compile all information concerning herself, her minor daughter, and a specified address. To the extent the request seeks records pertaining to the specified address, the request does not ask the department to compile records on any particular individual. Because this aspect of the request does not implicate the privacy of any individual, we conclude that the privacy concerns expressed in *Reporters Committee* are not implicated by this portion of the request.

To the extent the requestor asks the department to compile information about her daughter, the daughter's right to privacy is implicated. Thus, if the department has any records in which the daughter is portrayed as a suspect, defendant, or arrestee, it would normally have to withhold such information under common law privacy as encompassed by section 552.101 of the Government Code. *See id.* We note, however, that as the parent of a minor, the requestor would have a special right of access to information that would ordinarily be withheld to protect her daughter's common law privacy, and such information could not be withheld from her solely on that basis. *See Gov't Code § 552.023(b)* (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). For these same reasons, the requestor also has a special right of access to a compilation of her own criminal history, to the extent that it exists. *See Gov't Code § 552.023(b)*. Thus, under the present circumstances, none of the requested information may be withheld under section 552.101 on the basis of the holding in *Reporters Committee*.

Section 552.101 also encompasses information made confidential by statute. Section 58.007 of the Family Code governs law enforcement records relating to juvenile offenders and provides:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Information relating to juvenile crime victims is not made confidential by section 58.007. *See Open Records Decision No. 628 at 6 (1994)* (predecessor statute).

Report numbers 03073519 and 03123464 pertain to allegations of juvenile conduct that occurred after September 1, 1997. *See Fam. Code § 51.02(2)* (providing that in title 3 of Family Code, "child" means person who is ten years of age or older and under seventeen years of age). Thus, these reports are subject to section 58.007, and it does not appear that

any of the exceptions in section 58.007 apply. Therefore, report numbers 03073519 and 03123464 are confidential under section 58.007(c) of the Family Code and must be withheld in their entirety pursuant to section 552.101 of the Government Code.

We note, however, that report number 02080409 does not pertain to a juvenile suspect. Therefore, this report is not confidential under section 58.007 and may not be withheld under section 552.101 on that basis. Because you have claimed no other exception regarding this report and it is not confidential with respect to this requestor, report number 02080409 must be released to this requestor.

In summary, report numbers 03073519 and 03123464 must be withheld under section 58.007 as information made confidential by law. The remaining submitted information must be released to this requestor.<sup>1</sup>

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

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<sup>1</sup>The records to be released contain information relating to the requestor and her daughter that would be excepted from disclosure to the general public under laws and exceptions designed to protect privacy. However, as the subject of some of this information and the authorized representative of the subject of other information, the requestor has a special right of access to it. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). If the department receives another request for this information from someone other than the requestor, the department should again seek our decision.

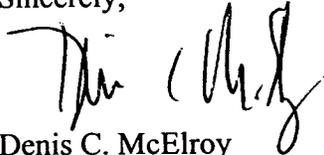
of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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/krl

Ref: ID# 200821

Enc. Submitted documents

c: Ms. Joann Hall  
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Conroe, Texas 77303  
(w/o enclosures)