



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 2, 2004

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901-1196

OR2004-4504

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202807.

The El Paso Police Department (the "department") received two requests for information from a requestor. In her first request, the requestor seeks a list of case numbers pertaining to a specific individual. In her second request, the requestor seeks records relating to specific 9-1-1 calls and a police investigation. You claim that some of the information responsive to the first request is excepted from disclosure under section 552.101 of the Government Code in conjunction with common law privacy and section 552.130 of the Government Code. You have released the rest of the information responsive to the first request. You claim that some of the information and 9-1-1 recordings responsive to the second request are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You have released one 9-1-1 call recording and some of the CAD report. We have considered the exceptions you claim and reviewed the submitted information.

We first address the information responsive to the first request, found in Exhibit H. 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, the requestor asks for all information concerning a certain person. In this case, we believe that the individual's right to privacy has been implicated. Thus, where the named individual is a possible suspect, we conclude that the department must withhold this information under common law privacy

as encompassed by section 552.101 of the Government Code. *See id.* 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).

We note that Exhibit H includes Texas motor vehicle information. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

The department must withhold the marked Texas motor vehicle information in Exhibit H under section 552.130.

We now turn to the information responsive to the second request, found in Exhibits D through G. Section 552.101 encompasses the confidentiality provisions found in section 261.201 of the Family Code. This section provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because Exhibits E through G consist of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, the information is within the scope of section 261.201 of the Family Code. You have indicated that the department has not adopted a rule that governs the release of this type of information. Therefore, the information in Exhibits E through G is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold the information in Exhibits E through G from disclosure

under section 552.101 of the Government Code as information made confidential by law.¹ Because section 552.101 is dispositive, we do not address your section 552.108 claim for Exhibits E through G.

The remaining information responsive to the second request is found on the 9-1-1 CAD report in Exhibit D. You also assert that the marked caller's originating telephone number and address on the 9-1-1 CAD report are confidential under section 772.318 of the Health and Safety Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and incorporates the confidentiality provisions found in chapter 772 of the Health and Safety Code. Section 772.318 of the Health and Safety Code makes confidential the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier. *See* Open Records Decision No. 649 (1996). You state the telephone number and address contained in the CAD report are the originating telephone number and address of a 9-1-1 caller that were supplied by a 9-1-1 service supplier to an emergency communication district that is subject to section 772.318 of the Health and Safety Code. Thus, the telephone number and address must be withheld from disclosure under section 552.101 as information deemed confidential by statute.

In summary, in response to the first request, any information maintained by the department that relates to the named individual as a suspect, arrested person, or criminal defendant must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with common-law privacy with the exception of information relating to routine traffic violations committed by the named individual. The Texas motor vehicle information we have marked must be withheld under section 552.130 of the Government Code. In response to the second request, the department must withhold Exhibits E through G under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Finally, the telephone number and address of the 9-1-1 caller contained in Exhibit D must be withheld under section 772.318 of the Health and Safety Code.

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

¹We note, however, that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, the child's parent(s) may have the statutory right to review that file. *See* Fam. Code § 261.201(g); Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Sess. Law Serv. 611, 641 ("A reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.").

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,



W. David Floyd
Assistant Attorney General
Open Records Division

WDF/sdk

Ref: ID# 202807

Enc. Submitted documents

c: Ms. Ginger Cloud
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(w/o enclosures)