



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 9, 2004

Mr. Darrell G-M Noga
Roberts & Smaby P.C.
1717 Main Street, Suite 3000
Dallas, Texas 75201

OR2004-6698

Dear Mr. Noga:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 206915.

The City of Coppell (the "city"), which you represent, received a request for police records related to a named individual for a specified time period. You indicate that some of the responsive information will be, or has been, provided to the requestor. In this instance, we note your acknowledgment that any arrest warrants and arrest warrant affidavits must be released to the requestor pursuant to article 15.26 of the Code of Criminal Procedure. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from required public 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. Information must be withheld from disclosure under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary

¹Although you raise section 552.305 as an exception to disclosure, we note that this section is a procedural provision permitting a governmental body to withhold information that may be private while the governmental body is seeking an attorney general's decision under the Act.

sensibilities, and (2) of no legitimate public interest. See *Indus. Found. v. Tex. Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). When a law enforcement agency compiles criminal history information that pertains to a particular individual, the compiled information takes on a character that implicates that individual's right to privacy in a manner that the same information in an uncompiled state does not. See *U. S. 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). Since the request is for all information concerning a named individual, we find that the request implicates the individual's right to privacy. Therefore, with the exception of the records made public by statute, any information that depicts the named individual as a criminal suspect, arrestee, or defendant must be withheld from disclosure under section 552.101 of the Government Code in conjunction with *Reporters Committee*.²

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).

²Because section 552.101 is dispositive, we need not address your remaining claims.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/krl

Ref: ID# 206915

Enc. Submitted documents

c: Ms. Jessica Gerhardt
501 Port O'Conner
Little Elm, Texas 75068
(w/o enclosures)