



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2004

Ms. Denise G. Obinegbo
Open Records Specialist
Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2004-7232

Dear Ms. Obinegbo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 207876.

The Richardson Police Department (the "department") received a request for all complaints made against the residents of a specific address. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered your claimed exceptions to disclosure and have reviewed the submitted information.

Initially, you argue that this request for information implicates an individual's common-law privacy rights. 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. Common-law privacy is encompassed in section 552.101. For information to be protected from public disclosure by the common-law right of privacy the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public, 540 S.W.2d at 685. In *United States Department of Justice v. Reporters Committee For Freedom of the Press*, 489 U.S. 749 (1989), the U.S. Supreme Court concluded that where an individual's criminal history record information is compiled

or summarized by a governmental entity, the information takes on a character that implicates an individual's right of privacy in a manner that the same individual records in an uncompiled state do not. In this instance, the requestor does not ask the department to compile an individual's criminal history. Accordingly, we find that an individual's right to privacy has not been implicated by this request. Thus, the submitted information is not protected from disclosure under section 552.101 of the Government Code.

Next, you claim that the submitted records are excepted from disclosure under section 552.108(a)(2). Section 552.108(a)(2) excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. After reviewing your argument, we find that you have not established that the submitted records relate to a closed investigation. Therefore, the submitted records may not be withheld under section 552.108(a)(2).

Finally, you claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. Section 552.103(a), the "litigation exception" excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. Gov't Code § 552.103(a). The purpose of section 552.103 is to protect a governmental body's position in litigation by forcing parties to obtain information relating to the litigation through the discovery process. Open Records Decision No. 551 (1990). In this instance, the department will not be a party to any criminal litigation relating to this matter. Since the department has no litigation interest in this matter, we conclude that section 552.103 is inapplicable. *See* Open Records Decision No. 392 (1983) (stating that Gov't Code § 552.103 may only be claimed by governmental body that is party to litigation). Since none of the department's claimed exceptions to disclosure apply, we conclude that the submitted records 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).

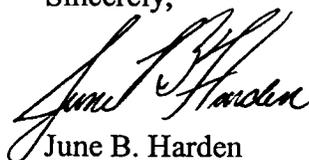
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 207876

Enc: Submitted documents

c: Ms. M. P. Brunson
1518 Yorkshire Drive
Richardson, Texas 75082
(w/o enclosures)