



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 8, 2004

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

OR2004-7643

Dear Ms. Hengen:

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# 208957.

The El Paso Police Department (the "department") received a request for all records related to a named individual for a specified time period. You state that you will release most of the responsive information. You claim, however, that portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of the requested information.<sup>1</sup>

We begin by noting that Exhibit E is not responsive to the instant request for information, as it was created after the date that the department received the request. This ruling does not address the public availability of any information that is not responsive to the request, and the department need not release that information in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received).

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy. Information is protected from disclosure by the common-law right to privacy when (1) it is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (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 Committee for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor seeks copies of all records in which a specified individual is identified. Thus, the request requires the department to compile information relating to this individual. Based on the reasoning set out in *Reporters Committee*, we conclude that such a compilation implicates the specified individual's right to privacy to the extent that it includes information where the named individual was a criminal suspect, arrestee, or defendant. Accordingly, we conclude that to the extent the department maintains responsive information that reveals that the specified individual was a criminal suspect, arrestee, or defendant, or that otherwise constitutes a compilation of an individual's criminal history, such information must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

Next, you contend that a portion of the information in the computer-aided dispatch reports submitted as Exhibit D is excepted under section 552.101. Section 552.101 also encompasses information made confidential by other statutes. Sections 772.118, 772.218 and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier. *See Open Records Decision No. 649* (1996). Section 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 9-1-1 telephone numbers and addresses. *See Health & Safety Code §§ 772.401, et seq.* You advise that the City of El Paso is part of an emergency communication district that was established under section 772.318. Based on your representation, we agree that the originating telephone numbers and addresses of the 9-1-1 callers that you have highlighted in Exhibit D are confidential under section 772.318 and must be withheld under section 552.101. We have marked some additional information in Exhibit D that is also confidential under section 772.318 and that must be withheld under section 552.101.

Section 552.130 of the Government Code prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, we agree that the department must withhold the information you have marked pursuant to section 552.130 of the Government Code.

Finally, the submitted information contains an insurance policy number. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. The department must, therefore, withhold the insurance policy number you have marked under section 552.136.

In summary, to the extent the department maintains responsive information that reveals that the specified individual was a criminal suspect, arrestee, or defendant, or that otherwise constitutes a compilation of an individual's criminal history, such information must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The department must withhold the originating telephone numbers and addresses of the 9-1-1 callers that you have highlighted, as well as the information that we have marked, under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. The department must also withhold the information you have marked pursuant to sections 552.130 and 552.136 of the Government Code. The remaining 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

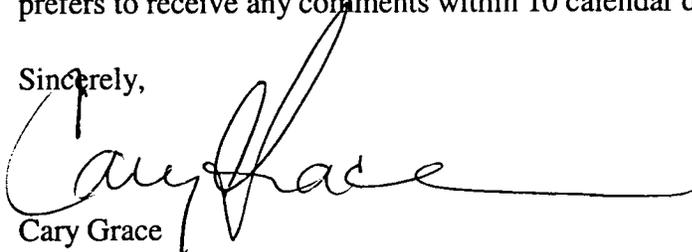
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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,



Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/jev

Ref: ID# 208957

Enc. Submitted documents

c: Ms. Susana Martinez  
8217 Marfil Drive  
El paso, Texas 79907  
(w/o enclosures)