ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 6, 2005

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Lubbock County
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2005-00208

Dear Ms. Clarke:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 216583.

The Lubbock County Sheriff's Office (the "sheriff") received a request for any and all documents related to a named individual. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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." 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 access to unspecified criminal records involving a named individual. Thus, the request requires the sheriff 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 sheriff maintains responsive information that reveals that the specified individual was a criminal suspect, arrestee, or defendant, such information must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with common-law privacy as set out in *Reporters Committee*.

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).

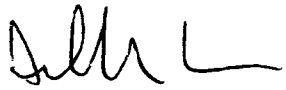
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 216583

Enc. Submitted documents

c: Mr. Mel Tittle
Lubbock Avalanche-Journal
P.O. Box 491
Lubbock, Texas 79408
(w/o enclosures)