



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2005

Ms. Donna L. Clarke
Assistant Criminal District Attorney
916 Main Street, Suite 1101
Lubbock, Texas 79401

OR2005-06063

Dear Ms. Clarke:

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# 227757.

The Lubbock County Sheriff's Office (the "sheriff") received a request for information pertaining to 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.

As a preliminary matter, we must address the sheriff's obligations under section 552.301 of the Government Code. Within fifteen business days of receiving a request for information, a governmental body that wishes to withhold information from public disclosure must submit to this office: (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld; (2) a copy of the written request for information; (3) a signed statement or sufficient evidence showing the date the governmental body received the written request; and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). You inform us that the sheriff received this request for information on April 21, 2005. As such, the fifteenth business day following the sheriff's receipt of the request was May 12, 2005. However, the sheriff did not submit the required copy of the request for information or copies of the requested documents until May 13, 2005. We therefore find that the sheriff failed to comply with the procedural requirements of section 552.301 in requesting a ruling from this office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See Gov't Code § 552.302; Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). This office has held that a compelling reason exists to withhold information when third party interests are at stake or when information is made confidential by another source of law. *See Open Records Decision No. 150 (1977)* (construing predecessor statute). Because the applicability of section 552.101 can provide a compelling reason to withhold information, we will address your claim regarding this section.

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. This exception encompasses the doctrine of common-law privacy, which protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and the public has no legitimate interest in it. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (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 Comm. for Freedom of the Press*, 489 U.S. 749 (1989).

In this instance, the requestor asks the sheriff for "all charges, the dates and dispositions in Lubbock County" for a named individual. This request implicates this individual's right to privacy. As such, to the extent that the sheriff maintains records in which the named individual is portrayed in criminal matters as a suspect, defendant, or arrestee, it must withhold such information in accordance with section 552.101 and the common-law right to privacy. However, information relating to routine traffic violations is not excepted from disclosure under section 552.101 in conjunction with common-law privacy and the holding in *Reporters Committee*. *Cf. Gov't Code § 411.082(2)(B)*. Thus, the sheriff may not withhold the information we have marked under section 552.101 on this basis because it relates to routine traffic violations.

We next address your claim regarding chapter 411 of the Government Code. Sections 411.083 of the Government Code prohibits the release of criminal history record information ("CHRI"). *See Gov't Code § 411.083* (CHRI is confidential). However, the definition of CHRI does not include driving record information. *Id.* § 411.082(2)(B). Because driving record information is not CHRI, section 411.083 is inapplicable to the marked information, and the sheriff may therefore not withhold it.

In summary, the sheriff must withhold the requested information to the extent it portrays the named individual as a suspect, defendant, or arrestee in criminal matters that are not traffic

violations pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must release the marked information.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 227757

Enc. Submitted documents

c: Mr. Alvin Vernon
1509 47th Street
Lubbock, Texas 79412
(w/o enclosures)