



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2005

Mr. John Patterson
Assistant City Attorney
City of Waco
Legal Services
P. O. Box 2570
Waco, Texas 76702-2570

OR2005-06401

Dear Mr. Patterson:

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# 228306.

The Waco Police Department (the "department") received a request for all arrest information on a named person and all police activity at a named address. You state that you have released portions of Exhibits #3 and #5. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions 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." This section encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *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 Comm. for Freedom of the Press*, 489 U.S. 749 (1989). However, when a requestor asks for information relating to a particular incident, the request does not implicate the privacy concerns expressed in *Reporters Committee* because complying with the request does not require the governmental body to compile unspecified records.

The present request asks, in part, for all arrest information held by the department concerning a named individual. We find that this portion of the request requires the department to compile the criminal history of the individual and thus implicates the individual's right to privacy as contemplated in *Reporters Committee*. Accordingly, to the extent the department maintains records, other than the requested reports regarding the specific address, that depict the named individual as a suspect, arrestee, or criminal defendant, such information must be withheld pursuant to section 552.101 in conjunction with the common-law privacy concerns expressed in *Reporters Committee*. However, the request also asks for police reports regarding a specific address. Since the privacy concerns expressed in *Reporters Committee* are not implicated for this portion of the request, the information responsive to this part of the request may not be withheld on that basis.

You claim that Exhibit #4 is protected under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibit #4 relates to a pending prosecution. Based upon this representation, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except from disclosure basic information about an arrest, an arrested person, or a crime. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).¹ We note that section 552.147 of the Government Code² provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the department must withhold the arrestee's social security number contained in Exhibit #4

¹Although section 552.108(a)(1) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. See Gov't Code § 552.007.

²Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

under section 552.147. We note that Exhibit #3 also contains a social security number that must be withheld under section 552.147 of the Government Code.³

You claim that some of the highlighted portions of Exhibit #5 are confidential under section 552.101 of the Government Code. Section 552.101 of the Government Code also encompasses chapter 772, which authorizes the development of local emergency communications districts. Section 772.218 applies only to an emergency 9-1-1 district established in accordance with chapter 772. See Open Records Decision No. 649 (1996). This statute makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. You indicate that the City of Waco is part of an emergency communication district that was established under section 772.218.⁴ Thus, if the information at issue was provided to the department by a service provider, the 9-1-1 callers' telephone numbers and addresses you have marked in Exhibit #5 are excepted from public disclosure under section 552.101 in conjunction with section 772.218 of the Health and Safety Code.

You also claim that some of the highlighted information in Exhibits #3 and #5 is confidential under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. After reviewing Exhibits #3 and #5, we agree that you must withhold the Texas-issued motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, to the extent the department maintains records, other than the requested reports regarding a specific address, that depict the named individual as a suspect, arrestee, or criminal defendant, such information must be withheld pursuant to section 552.101 and the common-law privacy concerns expressed in *Reporters Committee*. With the exception of the

³We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

⁴Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000.

basic information, the department may withhold Exhibit #4 under section 552.108(a)(1) of the Government Code. The department must withhold the social security numbers in Exhibits #3 and #4 under section 552.147 of the Government Code. If the 9-1-1 callers' telephone numbers and addresses you have marked in Exhibit #5 were provided to the department by a service provider, the department must withhold this information under section 552.101 in conjunction with section 772.218 of the Health and Safety Code. The department must withhold the Texas-issued motor vehicle record information you have marked in Exhibits #3 and #5. 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, 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).

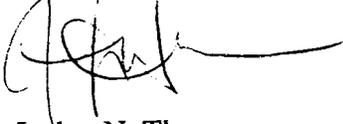
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read 'Jaclyn N. Thompson', with a long horizontal flourish extending to the right.

Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 228306

Enc. Submitted documents

c: Mike A. Kittrell
518 N. Hewitt Drive
Hewitt, Texas 76643
(w/o enclosures)