ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 29, 2005

Ms. Dianne Eagleton
Manager, Records Division
North Richland Hills Police Department
P.O. Box 820609
North Richland Hills, Texas 76182-0609

OR2005-06841

Dear Ms. Eagleton:

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# 229155.

The North Richland Hills Police Department (the "department") received a request for information relating to a named individual during a specified time interval. 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 have reviewed the information you submitted.

Initially, we address the department's obligations under section 552.301 of the Government Code. This section prescribes procedures that must be followed in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request for information, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See* Gov't Code § 552.301(e)(1)(A)-(D). If a governmental body does not request an attorney general decision as prescribed by section 552.301, the information

requested in writing is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

In this instance, you failed to submit the information at issue to this office within the fifteen-business-day period prescribed by section 552.301(e).[1] Therefore, the submitted information is presumed to be public under section 552.302 and must be released, unless there is a compelling reason to withhold any of the information. The presumption that information is public under section 552.302 can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). As your claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure, we will address this exception.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). When a law enforcement agency is asked to compile criminal history information with respect to a particular individual, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); Open Records Decision No. 616 at 2-3 (1993).

The present request is for "any and all" records of arrests and other incidents involving a named individual since 1998. This request for unspecified information implicates the individual's right to privacy. Therefore, to the extent that the department maintains any information that relates to the named individual as a criminal suspect, arrested person, or defendant, any such information is private under *Reporters Committee* and must be withheld from the requestor under section 552.101 of the Government Code.

We next note that the submitted information includes Texas driver's license information. Section 552.130 of the Government Code excepts from public disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this

[1]You inform us that the department received the present request for information on May 18, 2005. Accordingly, the department's fifteen-business-day deadline was June 9, 2005. Your submission of the information at issue is meter-marked June 10.

state."[2] Gov't Code § 552.130(a)(1). The Texas driver's license information that we have marked must be withheld from the requestor under section 552.130.

We also note that the submitted information includes a social security number. Section 552.147 of the Government Code[3] provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.[4] Therefore, the department must withhold the social security number contained in the submitted information under section 552.147.

In summary: (1) to the extent that the department maintains any information that relates to the named individual as a criminal suspect, arrested person, or defendant, any such information is private under *Reporters Committee* and must be withheld from the requestor under section 552.101 of the Government Code; (2) the Texas driver's license information must be withheld under section 552.130; and (3) the social security number must be withheld under section 552.147. The rest of the submitted 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

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[2]Unlike other exceptions to disclosure under the Act, this office will raise section 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

[3]Added 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).

[4]We 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.

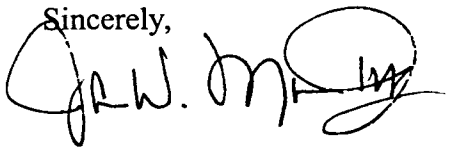
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 229155

Enc: Submitted documents

c: Mr. David D. Hamilton
1501 Destin Drive
Fort Worth, Texas 76131
(w/o enclosures)