



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2005

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2005-06988

Dear Ms. Graham:

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# 229463.

The Mesquite Police Department (the "department") received a request for information relating to activity at a specified address since January 1, 2004. You inform us that the department has released some of the requested information. You claim that other responsive information is excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Initially, we must address section 552.101 of the Government Code.¹ 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.*

¹Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because the Act prescribes criminal penalties for the release of confidential information. *See Gov't Code §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).*

v. Tex. Indus. Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976). When a law enforcement agency compiles criminal history information with respect to a particular individual, the compiled information takes on a character that implicates that 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); *see also* Open Records Decision No. 616 at 2-3 (1993). Privacy under *Reporters Committee* is not applicable, however, if the information relates to an offense for which an individual is currently involved in the criminal justice system. *Cf.* Gov't Code § 411.081(b). We have marked criminal history information in Exhibit 3 that appears to be protected by common-law privacy under *Reporters Committee*. Unless the marked information relates to an offense for which the individual is currently involved in the criminal justice system, it must be withheld from disclosure under section 552.101 of the Government Code

Common-law privacy under section 552.101 also encompasses the types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private). One of the police reports in Exhibit 2 contains intimate or embarrassing information. Ordinarily, only the intimate or embarrassing details of an incident are private under section 552.101. In this instance, however, the requestor is aware of the identity of the individual who is the subject of the report in question and of the details of the incident to which the report pertains. Consequently, withholding only the intimate or embarrassing details of the incident would not sufficiently protect the individual's right to privacy. Therefore, the department must withhold that entire report under section 552.101 in conjunction with common-law privacy. We have marked that report, along with a small amount of other private information in Exhibit 3 that the department also must withhold under section 552.101.

Next, we address your claim under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You inform us that the rest of the information in Exhibit 2 relates to pending cases that are still under investigation by the department. Based on your representation, we find that section 552.108(a)(1) is applicable in this instance. *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).

Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The department must release basic information with respect to each of the remaining cases in Exhibit 2, including detailed descriptions of the respective offenses, even if this information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the remaining information in Exhibit 2 under section 552.108(a)(1).²

We next note that section 552.147 of the Government Code³ 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 social security number of the arrested person in Exhibit 2 and the social security numbers in Exhibit 3 under section 552.147.⁴

Lastly, we address section 552.130 of the Government Code. This section 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 state” or “a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1)-(2). We agree that the Texas driver’s license and motor vehicle information that you have marked in Exhibit 3 must be withheld under section 552.130.

In summary: (1) the criminal history information that we have marked as private under *Reporters Committee* must be withheld under section 552.101 of the Government Code, unless the marked information relates to an offense for which the individual is currently involved in the criminal justice system; (2) the department must withhold the marked information that is confidential under section 552.101 in conjunction with common-law privacy under *Industrial Foundation*; (3) except for the basic information that must be released under section 552.108(c), the department may withhold the remaining information in Exhibit 2 under section 552.108(a)(1); (4) the department must withhold the social

²As we are able to make this determination, we do not address your claim under section 552.103 of the Government Code, except to note that section 552.103 generally does not except from disclosure the same basic information that must be released under section 552.108(c). *See* Open Records Decision No. 597 (1991).

³Added 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).

⁴We 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.

security number of the arrested person in Exhibit 2 and the social security numbers in Exhibit 3 under section 552.147; and (5) the Texas driver's license and motor vehicle information in Exhibit 3 must be withheld under section 552.130. 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 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).

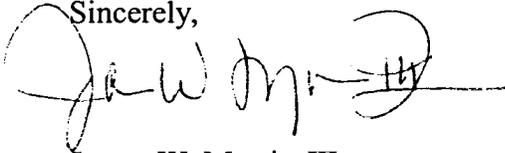
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "M".

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

JWM/sdk

Ref: ID# 229463

Enc: Submitted documents

c: Mr. Braden Keasling
2205 Tarpley Road #1307
Carrollton, Texas 75006
(w/o enclosures)