



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2005

Lieutenant Arturo Valdez
City of McAllen Police Department
P.O. Box 220
McAllen, Texas 78501

OR2005-07084

Dear Lieutenant Valdez:

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# 229576.

The McAllen Police Department (the "department") received a request for the "criminal history" of two named individuals. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 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 required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses common law privacy. 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, information that refers to an individual solely as a victim, witness, or involved person is not private under *Reporters Committee* and may not be withheld under section 552.101 on that basis. In this instance, a request for the criminal history of two named individuals is, in essence, a request for the department to compile these individuals' criminal history. We note, however, that the submitted records do not identify either of the named individuals as a suspect, arrestee, or criminal defendant. Accordingly, we find that the submitted records are not part of a compilation of the individuals' criminal

history as contemplated by *Reporters Committee*. Thus, the requested information is not protected from disclosure under section 552.101 of the Government Code on this basis.

The department also states that the submitted information is excepted under section 552.108(b) of the Government Code. Section 552.108(b)(1) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). When this exception is claimed, the agency claiming it must reasonably explain how releasing the information would interfere with law enforcement. Open Records Decision No. 434 at 3 (1986). Although you state that this subsection applies, we find that you have not adequately explained how releasing this information would interfere with law enforcement. Consequently, the department may not withhold the submitted information under section 552.108 of the Government Code.

We note, however, that the submitted information contains driver's license number to which section 552.130 of the Government Code is applicable.¹ Section 552.130 excepts information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. The department must withhold the marked driver's license number pursuant to section 552.130 of the Government Code. The remaining submitted information must be released to the requestor.

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

¹The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

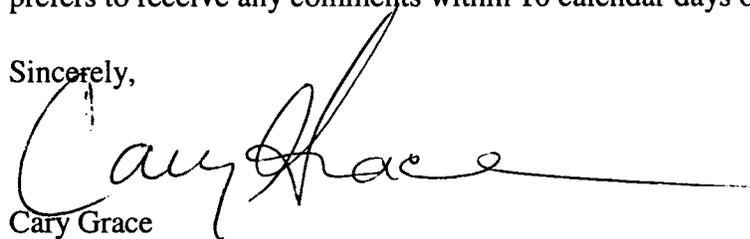
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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 that reads "Cary Grace". The signature is written in a cursive style with a long horizontal line extending to the right.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID#229576

Enc. Submitted documents

c: Ms. Loren Dent
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(w/o enclosures)