ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2005

Mr. Oscar J. Garcia
Lieutenant, Central Records Division
McAllen Police Department
P. O. Box 220
McAllen, Texas 78501

OR2005-07231

Dear Mr. Garcia:

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# 230527.

The McAllen Police Department (the "department") received a request for arrests, complaints, and investigations on a named individual at two specified addresses. We understand you to claim that some of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."[1] 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

[1]The Office of the Attorney General will raise mandatory exceptions like sections 552.101, 552.130, and 552.147 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 does not portray the individual as a suspect, defendant, or arrestee may not be withheld under section 552.101 on the basis of the holding in *Reporters Committee*. We also note that information relating to routine traffic violations is not excepted from disclosure on this basis. *Cf.* Gov't Code § 411.082(2)(B).

In this instance, the requestor asks the department for arrests, complaints, and investigations on a named individual at two specified addresses. We find that this request implicates this individual's right to privacy. As such, to the extent that the department 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. We note, however, that the submitted profile sheet contains some information relating to routine traffic violations as well as other information that does not portray the named individual as a suspect, defendant, or arrestee. This information may not be withheld under section 552.101 on the basis *Reporters Committee*. For your convenience, we have indicated the information in the submitted profile sheet that may not be withheld on this basis.

We also note that the profile sheet contains a Texas driver's license number and a social security number that are subject to sections 552.130 and 552.147 of the Government Code. Section 552.130 excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. As such, the department must withhold the Texas driver's license number we have marked pursuant to section 552.130. Section 552.147 [2] provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. Therefore, the department must also withhold the social security number we have marked in accordance with section 552.147.[3]

In summary, to the extent that the department maintains records in which the named individual is portrayed in criminal matters as a suspect, defendant, or arrestee, the department must withhold such information in accordance with section 552.101 of the Government Code and the common-law right to privacy. The department must also withhold the Texas driver's

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[2]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).

[3]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.

license number and social security number pursuant to sections 552.130 and 552.147 of the Government Code, respectively. The remaining submitted information must be released.[4]

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.

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[4]As we are able to make these determinations, we need not address the department's claim under section 552.108 of the Government Code.

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# 230527

Enc. Submitted documents

c: Mr. Oscar Ortega
1116 West Fern Avenue
McAllen, Texas 78501
(w/o enclosures)