



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2005

Ms. Catherine C. Kemp
Records Supervisor
City of Rowlett Police Department
P.O. Box 370
Rowlett, Texas 75030

OR2005-07669

Dear Ms. Kemp:

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# 230997.

The Rowlett Police Department (the "department") received a request for all reports involving certain named individuals and occurring at the requestor's residence for a certain time period. 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 reviewed the submitted information.

Initially, you assert that the submitted call slips regarding the requestor's residence are not responsive to the request because the requestor only seeks accident, offense, and arrest reports related to his residence. However, after reviewing the request, we conclude that the requestor seeks all reports related to his residence. Since we find that the call slips are responsive to this request, we will address the department's claimed exception with respect to this information.

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 incorporates 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 information that relates to a particular individual as a possible criminal suspect, arrestee, or defendant, 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); Open Records Decision No. 616 at 2-3 (1993). A request for information about a specific incident or offense, however, does not require the law enforcement agency to compile an individual's criminal history and thus does not implicate the individual's privacy as contemplated in *Reporters Committee*. Furthermore, law enforcement records in which an individual is depicted as a complainant, witness, or involved party other than a suspect, arrestee, or criminal defendant do not constitute records of the criminal history of the individual and thus are not protected by common law privacy as contemplated in *Reporters Committee*.

The requestor specifically seeks the arrest reports of four named individuals for any incidents occurring at the requestor's residence. You assert that this request for information requires the department to compile law enforcement records of the four named individuals and therefore implicates their privacy interests. We disagree. The requestor does not ask the department to compile the named individuals' criminal history. He only seeks those records which involve the named individuals and the requestor's residence. Therefore, because the submitted information involves the named individuals and the requestor's residence, we find that the department may not withhold this information under section 552.101 of the Government Code in conjunction with the holding in *Reporters Committee*.

However, we note that the submitted reports contain confidential information that must be withheld from the requestor.¹ Section 552.101 also encompasses confidential criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC"). Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov't Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We have marked the CHRI that is subject to chapter 411 and must be withheld under section 552.101 of the Government Code.

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

We also note that the submitted reports contain Texas motor vehicle record information. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 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(a). We have marked the Texas motor vehicle record information that must be withheld under section 552.130. The department may not withhold the Texas motor vehicle record information belonging to the requestor because he has a special right of access to such information. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles).

Finally, we note that the submitted reports contain social security numbers. 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 social security numbers we have marked under section 552.147.³ The requestor's social security number must be released because he has a special right of access to such information. *See id.*

In summary, the department must withhold the information we have marked under sections 552.101, 552.130, and 552.147 of the Government Code. The remaining 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

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).

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.

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); *Texas 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 A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 230997

Enc. Submitted documents

c: Mr. Monti Heflin
8205 Quail Creek Drive
Rowlett, Texas 75089
(w/o enclosures)