



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2005

Mr. Gary A. Scott
Assistant City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2005-07977

Dear Mr. Scott:

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# 231489.

The Conroe Police Department (the "department") received a request for any reports the department may have on two named individuals. You claim that the requested information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions 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." 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). In this instance, the requestor asks for the criminal records of two named individuals. In this case, we believe that the individuals' right to privacy has been implicated. However, the requestor indicates that these two named individuals are her clients. Under section 552.023(b) of the Government Code, a governmental body may not deny access to a person to whom information relates or that person's agent on grounds that the information is considered confidential under privacy principles. Therefore, if the requestor provides the department with proof that she is acting as the agent of the two named

individuals, the department may not withhold any information on the basis of the ruling in *Reporters Committee*. However, if the requestor does not provide proof that she is acting as these individuals' agent, the department must withhold any criminal records where the named individuals are listed as suspects, arrestees, or criminal defendants, to the extent they exist, under common law privacy as encompassed by section 552.101 of the Government Code. *See id.* As our ruling is dispositive, we need not address your remaining arguments.¹

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); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

¹We note that the department's remaining arguments for withholding the requested information are based on privacy principles. *See* Gov't Code §§ 552.130, .147. Therefore, if the requestor provides proof that she is acting as these individuals' agent, the department could not withhold any of the submitted information under those exceptions. *See* Gov't Code § 552.023(b).

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# 231489

Enc. Submitted documents

c: Ms. Tiffany Tryon
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(w/o enclosures)