



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2005

Ms. Lizabeth Plaster
Assistant City Attorney
City of Lewisville
P.O. Box 299002
Lewisville, Texas 75029-9002

OR2005-08425

Dear Mr. Plaster:

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# 232963.

The Lewisville Police Department (the "department") received two requests for (1) information pertaining to offense report #05-08815, (2) all information pertaining to a specified address, and (3) all information pertaining to three named individuals. You inform us that some of the requested information has been released, but claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ 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, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Where an individual's criminal history information has been compiled by a governmental entity, the

¹We understand you to assert that the department has released the submitted documents you have marked "page released."

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). The request asks for all information held by the department concerning three named individuals. We find that this request for unspecified law enforcement records requires the department to compile the criminal history of each individual and thus implicates each individual's right to privacy as contemplated in *Reporters Committee*. Accordingly, to the extent the department maintains any unspecified law enforcement information depicting any of the individuals at issue as a suspect, arrestee, or criminal defendant, such information is excepted from disclosure under section 552.101 in conjunction with common law privacy. However, the requestor also asks for information pertaining to a specific address and a specified offense report. Because the requestor specifically asks for this information, it is not part of a compilation of any of the named individuals' criminal histories as contemplated in *Reporters Committee* and may not be withheld on that basis.

Section 552.101 also encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007(c) reads as follows:

Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Offense report #05-08815 contains information involving juvenile conduct that occurred after September 1, 1997. None of the exceptions in section 58.007 appears to apply. Therefore, offense report #05-08815 is confidential pursuant to section 58.007(c) of the Family Code and the department must withhold it under section 552.101 of the Government Code.

You assert that offense reports #05-08601 and #05-4638 are excepted 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.” A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that offense report #05-08601 pertains to a case that was referred to the Denton County District Attorney’s office for prosecution. Based on this representation, we conclude that the release of this report would interfere with the detection, investigation, or prosecution of crime. *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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You assert that offense report #05-4638 pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to this information.

However, 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). Basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of the basic front-page offense and arrest information, you may withhold offense reports #05-08601 and #05-4638 under section 552.108.

Social security numbers are excepted under section 552.147 of the Government Code.² Section 552.147 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 contained in the basic information under section 552.147.³

To conclude, pursuant to section 552.101 of the Government Code, the department must withhold (1) offense report #05-08815 under section 58.007 of the Family Code and (2) under common law privacy, any unspecified law enforcement information depicting any of the named individuals as a suspect, arrestee, or criminal defendant. With the exception of

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.

the basic front-page offense and arrest information, the department may withhold offense reports #05-08601 and #05-4638 under section 552.108; however, the department must withhold the arrestee's social security number under section 552.147.

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).

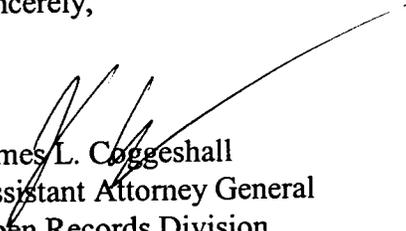
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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. 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 L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 232963

Enc. Submitted documents

c: Mr. Brandon Formby
The Dallas Morning News
131 West Main Street
Lewisville, Texas 75067
(w/o enclosures)