



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 27, 2005

Ms. Denise Obinegbo
Open Records Specialist
Richardson Police Department
P. O. Box 831078
Richardson, Texas 75083-1078

OR2005-08753

Dear Ms. Obinegbo:

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# 233033.

The Richardson Police Department (the "department") received a request for all documents related to a particular individual. 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.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the doctrine of common law privacy. Common law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and that is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). 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 in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 780 (1989) ("[A] third party's request for law enforcement records or information about a private citizen can

reasonably be expected to invade that citizen's privacy.”)¹ Here, because the requestor asks for all documentation concerning a certain person, the request implicates that person's right to privacy. Thus, to the extent the department maintains law enforcement records depicting the individual at issue as a possible suspect, arrestee, or criminal defendant, we determine that the department must withhold such information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. *See id.* However, because incident numbers 02-098956 and 05-006480 do not portray the individual as a possible suspect, arrestee, or criminal defendant, the department may not withhold these reports under section 552.101 in conjunction with the holding in *Reporters Committee*.

Common law privacy also encompasses the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision No. 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). After reviewing incident numbers 02-098956 and 05-006480, we have marked the information that is protected from disclosure by the common law right to privacy and must be withheld under section 552.101.

Additionally, incident number 02-098956 contains criminal history record information (“CHRI”). Section 552.101 excepts CHRI generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* 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.

¹Please note that the privacy interest in criminal history record information has long been recognized by Texas courts and in open records decisions issued by this office. *See, e.g., Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 188 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (release of individual's criminal history record compiled by city police department implicates privacy interests of individual) (construing statutory predecessor to section 552.101); Open Records Decision Nos. 616 (1993), 565 (1990), 354 (1982), 252 (1980), 216 (1978), 183 (1978), 144 (1977), 127 (1977).

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. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). 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 information that is CHRI and is excepted from required public disclosure by section 552.101 of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting the individual at issue as a possible suspect, arrestee, or criminal defendant, we determine that the department must withhold such information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. We have marked the information that is protected from disclosure by the common law right to privacy and must be withheld under section 552.101. We have marked the information that is CHRI and is excepted from required public disclosure by section 552.101 of the Government Code. The remaining information must be released to the requestor.²

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).

²We note that the submitted information contains a driver's license number that would ordinarily be withheld under section 552.130 of the Government Code. However, because this exception to disclosure is designed to protect an individual's privacy interest, the requestor has a special right of access to her own section 552.130 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), .130. Should the department receive a request for this information from an individual other than the requestor, it must seek another ruling from this office.

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,



José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 233033

Enc. Submitted documents

c: Vanessa MacFarlane
102 S. Spring Creek Dr.
Richardson, Texas 75081
(w/o enclosures)