



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 28, 2005

Mr. Warren Spencer
Legal Advisor
Plano Police Department
P. O. Box 860358
Plano, Texas 75086-0358

OR2005-08795

Dear Mr. Spencer:

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# 233241.

The Plano Police Department (the "department") received a request for any information on two individuals. 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, we note that the submitted information includes arrest warrants and arrest warrant affidavits. Article 15.26 of the Code of Criminal Procedure states "[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information." Crim. Proc. Code art. 15.26. The exceptions to disclosure found in the Act do not apply to information that is made public by other statutes. *See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1985)*. Thus, the department must release the arrest warrants and arrest warrant affidavits, which we have marked, in their entirety pursuant to article 15.26.

Turning to your claimed exception, 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 certain persons, the request implicates each person’s right to privacy. Thus, to the extent the department maintains law enforcement records, other than the arrest warrants and arrest warrant affidavits, depicting either 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 report number 980000065899 does not portray the individual mentioned as a possible suspect, arrestee, or criminal defendant, the department may not withhold the report under section 552.101 in conjunction with the holding in *Reporters Committee*.

Common law privacy also encompasses the type of information considered intimate and embarrassing by the Texas Supreme Court 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 report number 980000065899, 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.

In summary, the department must release the arrest warrants and arrest warrant affidavits, which we have marked, in their entirety pursuant to article 15.26. To the extent the department maintains law enforcement records, other than the arrest warrants and arrest warrant affidavits, depicting either individual at issue as a possible suspect, arrestee, or

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).

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. 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 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,

A handwritten signature in black ink, appearing to read 'J. Vela III', with a stylized flourish extending to the right.

José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 233241

Enc. Submitted documents

c: Maria Bragwad
6524 East Medalist Circle
Plano, Texas 75023
(w/o enclosures)