



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2005

Ms. M. Ann Montgomery
Assistant Ellis County & District Attorney
Ellis County
1201 N. Hwy 77, Ste. B
Waxahachie, Texas 75165-7832

OR2005-09607

Dear Ms. Montgomery:

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# 237873.

The Ellis County Sheriff's Office (the "sheriff") received a request for any information on a certain person. You state that the sheriff has provided the requestor with a portion of the requested information. However, you claim that the remaining information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the sheriff has submitted information that is not responsive to the request. In this instance, the sheriff has submitted a report that was not requested. Therefore, this report, which we have marked, is not responsive to the request. This ruling does not address the non-responsive report.

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.¹ Gov't Code § 552.101. Common law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of

¹The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body but will not ordinarily raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). When a law enforcement agency is asked to compile a particular individual's criminal history information, the compiled 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 U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). However, information that refers to an individual solely as a victim, witness, or involved person is not private under *Reporters Committee* and may not be withheld under section 552.101 on that basis.

The present request is for all reports relating to a named individual. This request requires the sheriff to compile unspecified law enforcement records concerning the named individual. Thus, we find that this request implicates this individual's right to privacy. Accordingly, to the extent the sheriff maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 in conjunction with common law privacy pursuant to the decision in *Reporters Committee*.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).

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

²As our ruling is dispositive, we need not address your argument against disclosure.

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,



Brian J. Rogers
Assistant Attorney General
Open Records Division

BJR/krl

Ref: ID# 237873

Enc. Submitted documents

c: Terry Mulloy
511 East John Carpenter Freeway
Irving, Texas 75062-3958
(w/o enclosures)