ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2005

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

OR2005-10037

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# 238961.

The Conroe Police Department (the "department") received a request for all offense reports for a named individual. You state that you have already released some of the requested information to the requestor. You claim that the remaining information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions 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. Gov't Code § 552.101. Common-law privacy 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). 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).

In this instance, the requestor asks for all offense reports involving a named individual. We determine that this request implicates this individual's right to privacy. Thus, to the extent the department maintains law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, the department must withhold such information pursuant to section 552.101 in conjunction with common-law privacy in accordance with the decision in *Reporters Committee*.

The department has submitted incident report # 02093225 in which the named individual is not listed as a suspect, arrestee, or criminal defendant and raises section 552.108 of the Government Code. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." Gov't Code § 552.108(a)(2). You state that incident report # 02093225 pertains to a case that has concluded in a result other than conviction or deferred adjudication. Based on this representation, we agree that section 552.108(a)(2) is applicable to the information at issue.

We note, however, that 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 made public in *Houston Chronicle v. City of Houston*, 531 S.W.2d 177, 186-188 (Tex.Civ. App.–Houston [14th Dist.] 1975, writ ref'd. n.r.e.); Open Records Decision No. 127 (1976). Thus, with the exception of the basic front page offense information, you may withhold incident report # 02093225 from disclosure based on section 552.108(a)(2) of the Government Code. We note that you have the discretion to release all or part of the remaining information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the department must withhold any law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant under section 552.101 of the Government Code in conjunction with common law privacy and the decision in *Reporters Committee*. With the exception of basic information that must be released, the department may withhold incident report # 02093225 under section 552.108(a)(2) of the Government Code. Because this ruling is dispositive, we do not address the remaining exception you have raised.

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).

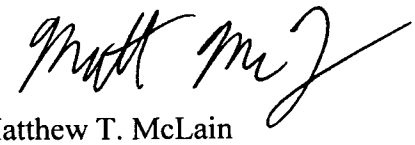
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Matthew T. McLain
Assistant Attorney General
Open Records Division

MTM/jh

Ref: ID# 238961

Enc. Submitted documents

c: Mr. Frank Enriquez
4200-B N. Bicentennial
McAllen, Texas 78504
(w/o enclosures)