



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 22, 2005

Ms. Leona Clay
Administrative Assistant
Harker Heights Police Department
120 South Harley Drive
Harker Heights, Texas 76548

OR2005-10565

Dear Ms. Clay:

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# 236930.

The Harker Heights Police Department (the "department") received a request for a specified incident report involving named individuals and any other relevant reports involving the same individual. You state that you have released basic information. See Gov't Code § 552.108(c) (stating that basic information about arrested person, arrest, or crime may not be withheld under Gov't Code § 552.108); see also *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. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. 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." Gov't Code § 552.101. This exception encompasses the doctrine of common-law privacy, which protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and the public has no legitimate interest in it. *Indus. Found. v. Tex. 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. See *U. S. Dep't of Justice v. Reporters*

Comm. for Freedom of the Press, 489 U.S. 749 (1989). However, information that does not portray the individual as a suspect, defendant, or arrestee may not be withheld under section 552.101 on the basis of the holding in *Reporters Committee*.

In this instance, the requestor asks the department for a specified report “along with any other relevant reports” involving a named individual. We note that when a requestor asks for information regarding a specified incident, the request does not implicate the privacy concerns expressed in *Reporters Committee*. Here, incident report No. 05-00917 pertains to the incident that was specified by the requestor. As such, this information may not be withheld under section 552.101 on the basis of *Reporters Committee*. However, the request, in part, also seeks unspecified information involving a named individual. We find that this portion of the request requires the department to compile the criminal history of the individual, and thus implicates the individual’s right to privacy as contemplated in *Reporters Committee*. However, the documents you have submitted do not identify the individual at issue as a suspect, arrestee, or criminal defendant. Therefore, the department may not withhold any portion of the submitted information under section 552.101 on the basis of *Reporters Committee*.

Common-law privacy also encompasses the types of information that are 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). The submitted documents contain information that is considered highly intimate or embarrassing and of no legitimate concern to the public. In most cases, the department would be allowed to withhold only this information. In this instance, however, the requestor knows the identity of the individual involved as well as the nature of the information in question. Therefore, withholding only certain details of the incident from the requestor would not preserve the subject individual's common law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, we determine that the department must withhold incident report number 05-00917 in its entirety under section 552.101.

We next address your claim under section 552.108 of the Government Code with respect to the remaining submitted information. Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime. . . if. . . 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). Section 552.108(a)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication. You inform us that the submitted information pertains to an investigation that did not result in a conviction or a deferred adjudication. Based on your representations and our review, we agree that section 552.108(a)(2) is applicable to the remaining submitted information. Thus, with the

exception of basic information, which you state you have released, the department may withhold the remaining submitted information under section 552.108 of the Government Code.

In summary, the department must withhold incident number 05-00917 in its entirety under section 552.101 in conjunction with common-law privacy. The department may withhold the remaining submitted information, except basic information, under section 552.108 of the Government Code.

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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 236930

Enc. Submitted documents

c: Ms. Jennifer Wynhausen
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(w/o enclosures)