



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 7, 2006

Mr. Matthew C. G. Boyle
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Irving, Texas 75062-2763

OR2006-02273

Dear Mr. Boyle:

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# 243819.

The Joshua Police Department (the "department"), which you represent, received three requests for and any and all offense reports and related materials pertaining to three named individuals. You state that the department has released some of the requested information to the requestor, but claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the common law right to privacy. Common law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no

¹We note that you failed to timely assert section 552.130 of the Government Code. See Gov't Code § 552.301(b) (governmental body must state exceptions that apply not later than tenth day after receiving request). However, because section 552.130 is a mandatory exception to disclosure, we will consider your arguments under that exception. See Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302).

legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). When a law enforcement agency is asked to compile criminal history information with respect to a particular individual, 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); Open Records Decision No. 616 at 2-3 (1993).

The present request is for unspecified information relating to any of three named individuals. To that extent, the request implicates the named individuals' right to privacy. Therefore, to the extent that the department maintains any information that relates to any of the named individuals as a criminal suspect, arrestee, or defendant, any such information is protected by common law privacy under *Reporters Committee* and must be withheld from the requestor under section 552.101 of the Government Code.

Next, we address your claim under section 552.108 of the Government Code. This exception provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime.

Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See *id.*, § 301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that incident report number 252102 pertains to a case that is pending prosecution. Based upon your representations, we conclude that the release of incident report number 252102 would interfere with the detection, investigation, or prosecution of crime. We therefore agree that section 552.108(a)(1) is applicable to this information. See *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.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases).

However section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 185. Basic information includes the identification and description of the complainant and a detailed description of the offense. See *id.*; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, incident report number 252102 may be withheld by the department.

In summary, 1) any information maintained by the department that relates to any of the named individuals as a criminal suspect, arrestee, or defendant is protected by common law privacy under *Reporter's Committee* and must be withheld from the requestor under section 552.101 of the Government Code; and 2) with the exception of basic information, the department may withhold incident report number 252102 under section 552.108 of the Government Code.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 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

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

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,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/segh

Ref: ID# 243819

Enc: Submitted documents

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