



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 15, 2007

Mr. Denis C. McElroy
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2007-02900

Dear Mr. McElroy:

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# 277173.

The Fort Worth Police Department (the "department") received a request for information pertaining to a named individual. 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 have reviewed the information you submitted.

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 (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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy,

both elements of the test must be established. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

In this instance, the request is for any records regarding a named individual. This request for unspecified law enforcement records requires the department to compile the named individual's criminal history. Therefore, to the extent that the department maintains any law enforcement records that depict the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses information that other statutes make confidential. Section 261.201 of the Family Code provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family Code] and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Because the information relating to service number 96340848 consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code, that information falls within the scope of section 261.201(a). As you do not indicate that the department has adopted a rule that governs the release of that type of information, we assume that no such rule exists. Given that assumption, we conclude that the department must withhold the information that relates to service number 96340848 under section 552.101 in conjunction with section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986)* (addressing predecessor statute).

In summary: (1) to the extent that the department maintains any law enforcement records that depict the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy; and (2) the department must withhold the information that relates to service number 96340848 under section 552.101 in conjunction with section 261.201 of the Family 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).

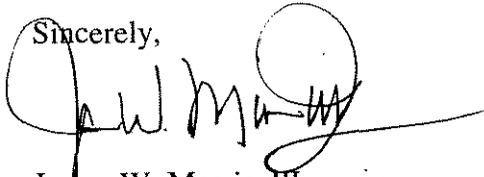
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

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

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/jb

Ref: ID# 277173

Enc: Submitted documents

c: Ms. Denis M. Hebert
Legge, Farrow, Kimmitt, Mcgrath & Brown, L.L.P.
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Houston, Texas 77057
(w/o enclosures)