



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 22, 2007

Ms. Meredith Ladd
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2007-10921

Dear Ms. Ladd:

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# 287518.

The Town of Flower Mound (the "town"), which you represent, received a request for the arrest record of a named person, and six specific police reports. 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 reviewed the submitted information.¹

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy. 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 section encompasses information protected by the common-law right to 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 United States Dep't*

¹We note that the town did not submit specifically requested report number 07003981 to our office for review. We assume that, to the extent this report existed when the town received the request for information, you have released it to the requestor. If not, then you must do so immediately. *See* Gov't Code §§ 552.006, 552.301, 552.302; Open Records Decision No. 664 (2000).

of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749 (1989). 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. In addition, when a requestor asks for information relating to a particular incident, the request does not implicate *Reporters Committee* because complying with the request does not require the governmental body to compile unspecified records.

The requestor in this case asks for the arrest record of the named individual. When a requestor asks for all information concerning a certain person, we believe that the individual's right to privacy has been implicated to the extent the named individual is a possible suspect, defendant, or arrestee. Therefore, to the extent the town maintains records that depict the named individual as a suspect, arrestee or criminal defendant, such information is excepted from disclosure in its entirety under section 552.101 and the common-law right to privacy.

However, in this instance, the requestor is, in part, also requesting specific police reports. Therefore, this part of the request is not for unspecified information regarding the named individual. Accordingly, we conclude that the request for the specific police reports does not implicate the named individual's right to privacy. Consequently, the town may not withhold the specific police reports under section 552.101 in conjunction with the common-law right to privacy on the basis of the holding in *Reporters Committee*. As you raise no other argument against disclosure, the town must release the specific police reports to the requestor.

In summary, to the extent the town maintains records that depict the named individual as a suspect, arrestee or criminal defendant, such information is excepted from disclosure in its entirety under section 552.101 and the common-law right to privacy. The town must release the specific police reports to the requestor.

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,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/mcf

Ref: ID# 287518

Enc: Submitted documents

c: Ms. Marianne Poer
3105 Kiley Lane
Flower Mound, Texas 75022
(w/o enclosures)