



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 7, 1996

Mr. John Steiner
Division Chief
City of Austin
Law Department
P.O. Box 1088
Austin, Texas 78767-1088

OR96-0909

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 40022.

The City of Austin (the "city") received a request for a printout of all 911 telephone calls during the past two years in which the caller requested assistance at a certain address, copies of any offense reports that resulted from any of those calls, and copies of all offense reports regarding a certain individual.

You inform us the city has released the requested printout of 911 calls. You assert that two offense reports that resulted from the 911 calls are excepted from required public disclosure based on sections 552.101, 552.103, and 552.108. You assert that the copies of all offense reports regarding the named individual are excepted from required public disclosure based on section 552.101 of the Government Code.

We begin with the copies of all offense reports of the named individual. We believe the compilation of all offense reports of a named individual constitutes a criminal history record of that individual.¹ Federal and state case law regarding the common-law

¹We do not believe an offense report of a case that is pending is part of the offender's criminal history. Thus, a compilation of offense reports of pending charges does not implicate the offender's privacy rights. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Furthermore, we do not believe that the offense report in which the named individual is the victim of the alleged crime is part of that individual's criminal history.

right to privacy prohibit the public release of an individual's criminal history. *See* Open Records Letter No. 96-0225 (1996). Section 552.101 of the government Code excepts from required public disclosure information that is deemed confidential by law. Consequently, the city must withhold from disclosure the copies of the named individual's offense reports pursuant to section 552.101 of the Government Code.

You assert that with the exception of the front page offense report information, one of the offense reports made as a result of a 911 call is excepted from required public disclosure based on sections 552.103 and 552.108. You inform us that the report relates to a criminal case pending in Travis County Court.

Section 552.108 of the Government Code, sometimes referred to as the "law enforcement" exception, provides as follows:

(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].

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

This exception generally applies to evidentiary information related to a pending criminal case. Once a case is closed, however, evidentiary information may be withheld only if its release "will unduly interfere with law enforcement and crime prevention." *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

We agree that section 552.108 applies to the offense report that relates to the case that is pending in a Travis County Court. Consequently, the city may withhold from disclosure the report, with the exception of the front page offense report information.

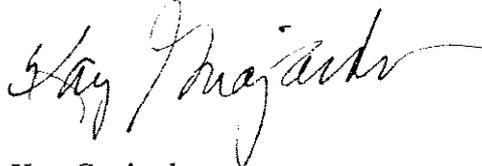
You assert that the privacy rights of individuals named in the report are implicated by its release. You also assert that the privacy rights of an individual named in another offense report are implicated by its release.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

We have reviewed both offense reports. We conclude that common-law privacy does not except from public disclosure any of the information in the report that relates to the pending Travis County case. *See* Open Records Decision No. 611 (1992). However, we believe the other offense report contains highly intimate information in which the public has no legitimate interest. *See* Open Records Decision No. 422 (1984). We therefore have marked portions of the report that the city must withhold from the public pursuant to section 552.101 of the Government Code.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 40022

Enclosures: Marked documents

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(w/o enclosures)