



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 3, 1997

Captain Robert Taylor
Amarillo Police Department
P.O. Box 1971
Amarillo, Texas 79186-0001

OR97-1276

Dear Captain Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 106347.

The Amarillo Police Department (the "department") received requests for information the department has on each of four individuals as "suspect, witness, or complainant" and requests for three specific offense reports, #97-21336, #96-126998, and #70-8855. You claim that the requested documents are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common-law right of privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We note at the outset that to the extent the requestor is asking for any unspecified records in which the named individuals are identified as a "suspect," the requestor, in essence, is asking that the department compile those individuals' criminal histories. 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 of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See Open Records Decision Nos. 616 (1993), 565 (1990)*. The department, therefore, must withhold all compilations of the referenced individuals' criminal histories pursuant to section 552.101.

We note, however, that the federal regulations referenced in *Reporters Committee* which govern the release of criminal history information provide that "[n]othing in these regulations

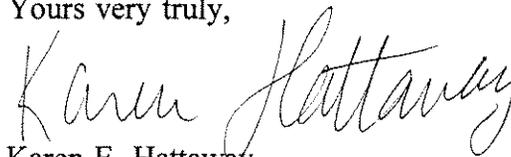
prevents a criminal justice agency from disclosing to the public criminal history record information related to the offense for which an individual is currently within the criminal justice system.” 28 C.F.R. § 20.20(c); *see also* Gov’t Code § 411.081(b) (similar provision under Texas law governing release of criminal history information that law enforcement agencies obtain from the Texas Department of Public Safety or other state law enforcement agencies). Thus, we do not believe that the common-law right to privacy extends to criminal history information “related to an offense for which an individual is currently within the criminal justice system.”

We now address the remaining requested documents not discussed above. Section 552.108 of the Government Code exempts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime,” and “[a]n 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.” Gov’t Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Because the remaining documents clearly come within the purview of section 552.108, we conclude that most of the information submitted to this office may be withheld under this section.

We note, however, that information normally found on the front page of an offense report is generally considered public. *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). Thus, the department must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Although section 552.108 authorizes the department to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov’t Code § 552.007.

We are resolving this matter with an 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 should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 106347

Enclosures: Submitted documents

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