



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 3, 1997

Mr. Kevin D. Pagan  
Assistant City Attorney  
City of McAllen  
P.O. Box 220  
McAllen, Texas 78505-0220

OR97-2424

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 109751.

The City of McAllen (the "city") received two requests from the same requestor. One request is for "copies of any and all documentation of any and all police activity regarding" five individuals. The other request is for "copies of any and all documentation of any and all police activity regarding" two individuals and one property address. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. You also note that the requestor is, in essence, asking for the named individuals' criminal histories.

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). The requestor, in essence, is asking that the city compile the referenced 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 city, therefore, must withhold all compilations of the referenced individuals' criminal histories pursuant to section 552.101 in conjunction with the common-law right to privacy. We have marked the documents that must be withheld under section 552.101.

On the other hand, the request for documents regarding a particular address does not constitute a request for an individual's criminal history. Therefore, we must address your section 552.108 claim for these documents. The Seventy-fifth Legislature amended section 552.108 of the Government Code to read 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 the requirements of Section 552.021 if:

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

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(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 the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108.

With regard to the applicability of section 552.108, you state the following:

In this particular case, the case investigation is ongoing and therefore release of information related to the investigation would interfere with the department's ability to properly investigate and/or prosecute the criminal activity involved in the records . . . In this particular case, the attached documents deal with criminal activity that did not result in conviction or deferred adjudication and therefore the documents are exempt from public disclosure.

You arguments refer to "this particular case" and "the case investigation." We note, however, that you submitted to this office documents relating to several cases. We are unable to determine to which "particular case" your arguments are addressed. Accordingly, we must conclude that the documents relating to police activity at the stated address are not excepted from disclosure under section 552.108. These documents, which we have marked, must be released to the requestor.

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# 109751

Enclosures: Marked documents

cc: Mr. J.J. Gonzales  
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(w/o enclosures)