



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 19, 1997

Captain Robert Taylor
Amarillo Police Department
200 E. 3rd
Amarillo, Texas 79101-1514

OR97-2798

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# 111396.

The Amarillo Police Department (the "department") received requests for records in which certain named individuals are identified as suspects, witnesses, or complainants. You contend the requested records are excepted from required public disclosure under 552.108 of the Government Code. You also note that the requests are tantamount to requests for the 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). 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.

You have submitted to this office several reports in which the named individuals are identified as witnesses or complainants. You have marked several of these reports as

“unadjudicated” and contend that they are excepted from disclosure under section 552.108(a)(2). Section 552.108 of the Government Code provides in part:

(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;

...

(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. The offense reports we have marked with green flags do not constitute criminal history information. We understand you to assert that these offense reports relate to cases that have not been and will not be adjudicated. Under these circumstances, we conclude that the offense reports marked with green flags are excepted from disclosure under section 552.108(a)(2). We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *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, you must release the type of information that is 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(a)(1) authorizes you to withhold the remaining information in these offense reports 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 have also marked one offense report with a red flag. This offense report references one of the named individual's as a witness and, therefore, does not constitute criminal history information. You have not made any specific arguments against the disclosure of this offense report. However, because this offense report relates to a sexual assault, information that identifies the victim is protected by the common-law right to privacy and excepted from disclosure under section 552.101. *See* Open Records Decision No. 339 (1982). We have marked the identifying information that the department must withhold. We have also marked some criminal history information that must be withheld under section 552.101. The remainder of the offense report marked with a red flag is not excepted from disclosure and 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# 111396

Enclosures: Marked documents

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