



December 22, 1999

Ms. Pamela Wolek
Assistant City Attorney
City of Amarillo
P. O. Box 1971
Amarillo, Texas 79105-1971

OR99-3731

Dear Ms. Wolek:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130607.

The Amarillo Police Department (the "department") received a request for "any police case files on Sarah Donn Lawrence, Jay Kelly Pinkerton and Sheri Lynn Welch." You explain that Pinkerton murdered both Lawrence and Welch and has since been convicted and executed. You contend that much of the requested police file is excepted from disclosure under section 552.101 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You state that the requested information includes the compiled criminal histories of many individuals other than Pinkerton. We agree that the department must withhold pursuant to statutory law all criminal history information obtained from the TCIC and NCIC. The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 10-12 (1990). Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1).

Additionally, we generally agree with your contention that to the extent the department maintains compilations of individuals' criminal history not made confidential under the above cited provisions, those compilations nevertheless must be withheld from the public. 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). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See* Open Records Decision Nos. 616 (1993), 565 (1990). Accordingly, the

department must withhold all such compilations regarding living individuals on privacy grounds. *But see* further discussion of common-law privacy *infra*.

You also seek to withhold the identities of all individuals in the requested case files, other than Pinkerton, Lawrence, and Welch, on privacy grounds. Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The right of privacy, however, is purely personal and lapses upon death. *See Moore v. Charles B. Pierce Film Enterprises Inc.*, 589 S.W.2d 489 (Tex. Civ. App.--Texarkana 1979, writ ref'd n.r.e.). *See also* Attorney General Opinions JM-229 (1984); H-917 (1976). On the other hand, if the release of information about a deceased person reveals highly intimate or embarrassing information about living persons, the information must be withheld under the common-law privacy aspect of section 3(a)(1). *See* Attorney General Opinion JM-229.

We have reviewed the representative sample of documents you submitted to this office and have identified portions of the records that implicate certain individuals' privacy interests. We have marked that information accordingly. The remaining information does not implicate any individual's privacy interests¹ and therefore must be released in its entirety,² with the following exceptions.

Section 552.130(a)(1) of the Government Code requires that the department withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Additionally, section 552.130(a)(2) requires the withholding of information relating to "a motor vehicle title or registration issued by an agency of this state." Accordingly, the department must withhold these types of information contained in the documents at issue.

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.

¹We also note that the state of Texas does not recognize the tort of false-light privacy. *Cain v. Hearst Corp.*, 878 S.W.2d 577 (Tex. 1994); *see also* Open Records Decision No. 579 (1990).

²You state that the department also possesses at least six video tapes of the murder scenes. You explain, however, that "these tapes are in a format which is twenty (20) years old and not compatible with current electronic equipment therefore I have not been able to view the tapes, I can only surmise their contents from the labels. . . . It is the City position again that these tapes' contents would be protected by the common-law privacy rights of the family members as they no doubt contain documentation of the victims at the scene of the crime and would be quite disturbing to those family members just as the photographs would be." This office cannot rule on the public nature of records not before us. However, if you determine that the video tapes contain substantially the same type of information as that contained in the photographs submitted to this office, we conclude that the video tapes must be released.

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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/RWP/jc

Ref: ID# 130607

Encl. Submitted documents

cc: Ms. Holly Parker
Police Reporter
Amarillo Globe-News
P. O. Box 2091
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(w/o enclosures)