



December 30, 1999

Mr. David M. Berman  
Nicholas, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR99-3827

Dear Mr. Berman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130785.

The City of Balch Springs (the "city") received requests for information from the same requestor for all police/incident reports and other available information regarding two named individuals. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This section encompasses other federal statutes and case law.

To the extent the requestor is asking for any unspecified records in which the named individual is identified as a "suspect," the requestor, in essence, is asking that the city compile that individual's criminal history. 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 individual's criminal history pursuant to section 552.101.

With regard to the information requested regarding the other named individual, you also submit documentation and a report in which the individual is the victim in an incident involving child abuse. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because the requested information relates to an allegation of child abuse, the information is within the scope of section 261.201 of the Family Code. We are not aware of any rules promulgated by the city which permit the dissemination of this type of information. Accordingly, the requested report is made confidential by section 261.201 of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.

Finally, you submitted copies of two prior requests for information regarding one of the named individuals which was filed with the city in 1995. This information does not relate to litigation of a civil or criminal nature to which the city is a party under section 552.103. Nor is it 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 pursuant to section 552.108. Likewise, it is not information considered to be confidential by law, either constitutional, statutory, or by judicial decision under section 552.101. Therefore, as none of the claimed exceptions apply to the two prior requests for information, they may not be withheld from disclosure.

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.

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

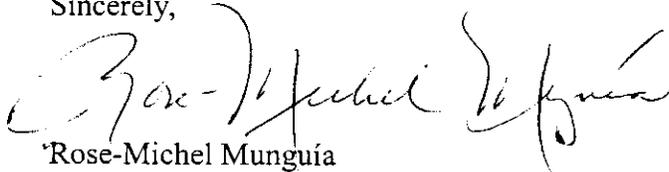
governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

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,



Rose-Michel Munguía  
Assistant Attorney General  
Open Records Division

RMM/jc

Ref: ID# 130785

Encl. Submitted documents

cc: Ms. Cynthia Foy  
9801 Adleta  
Dallas, Texas 75243  
(w/o enclosures)