



March 20, 2000

Mr. Steve D. Monté
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR2000-1094

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133047.

The City of Dallas Police Department (the "department") received two requests from the same requestor for documentation of all license applications for sexually oriented businesses and dance halls. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You have provided copies of applications for licenses for managers and dance hall supervisors filed by individuals as responsive to the request for information. If an applicant has been arrested or charged for any crime other than a minor traffic violation, the applicant is required to provide that information on the license application. The application further states that the failure to supply the criminal history record will result in denial of the application. You contend that the applicants are voluntarily compiling their own criminal history on their applications. You ask whether release of the information constitutes an invasion of the individual's right to privacy.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Information must be withheld under section 552.101 in conjunction with common law privacy when the information is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, *and* it is of no legitimate concern to the public. *Industrial Found. v.*

Texas Indus. Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The general rule followed by this office with regard to the required public disclosure of criminal history record information is that where an individual's criminal history record information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy and so in order to protect that individual's privacy, such a compilation is not subject to required public disclosure. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (determining that F.B.I. rap sheet of private citizen is categorically private information); Open Records Decision Nos. 616 (1993), 565 (1990). This case, in our opinion, presents an exception to this general rule.

While we believe the criminal history information supplied by the applicant to be highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, we believe the public has a legitimate interest in the information. This is so because, in this case, the criminal history information provided by an applicant directly pertains to the applicant's qualifications to operate a business in the state of Texas. In addition, the information sheds at least some light on the city's performance of one of its government functions, the licensing of sexually oriented businesses. See Gov't Code § 552.001 (concerning policy of Act that each person is entitled to complete information about affairs of government). We therefore believe that the information is of legitimate public interest. See Open Records Decision Nos. 215 (1978), 157 (1977); Attorney General Opinion H-242 (1973). Consequently, we conclude that the release of the information at issue does not implicate the applicant's privacy rights. Thus, the city must release the information to the requestor.

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).

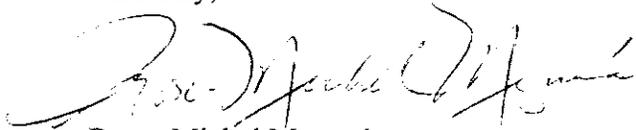
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

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/ch

Ref: ID# 133047

Encl. Submitted documents

cc: Mr. Stuart Pully
P.O. Box 781609
Dallas, Texas 75378
(w/o enclosures)