



October 10, 2000

Mr. Charles Allen, II
Legal Office
Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2000-3879

Dear Mr. Allen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID#139931.

The City of Richardson Police Department (the "department") received a request for "all information" from offense reports, arrest reports and call cards regarding a named individual. The request also specifically seeks information pertaining to two incidents described by the requestor and involving the named individual. You explain the department has released to the requestor the responsive information pertaining to one of the incidents, except "one TLETS printout" which you have submitted for our review. As to the other incident, you state that the department has released to the requestor a "Press Copy" but has withheld the remaining responsive information (an offense report), which you have also submitted for our review. You assert that the submitted offense report contains information that is excepted from required public disclosure under section 552.108 of the Government Code. We have considered the exception you assert and we have reviewed the submitted information.

Although you have not raised section 552.101 of the Government Code as an applicable exception, we must consider whether any of the information requested is excepted from required public disclosure pursuant to section 552.101. The Office of the Attorney General will raise section 552.101 on behalf of a governmental body when necessary to protect third-party interests. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

We understand the initial part of the request to essentially ask that the department compile the criminal history of a named individual. We believe that the information responsive to such a request must be withheld under section 552.101. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or *by judicial decision.*" (Emphasis added). 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 pursuant to section 552.101 all information resulting from a compilation performed by the department of the referenced individual's criminal history.

We next address the submitted information which is evidently responsive to the second part of the request in which the requestor, and not the department, essentially performed the act of compilation by requesting the information held by the department pertaining to two specific incidents described by the requestor. We do not believe that *the request* for this information triggers a right to privacy of the named individual, nor is the information excepted from disclosure in its entirety as comprising a compilation *by the department* of the named individual's criminal history. You state that the "TLETS printout" "was redacted in whole pursuant to Texas law" but you do not specify an exception under the Act for withholding this information. Please note that section 552.301(b) of the Government Code, in pertinent part, requires you to "state the exceptions that apply" to the information at issue. See Gov't Code § 552.301(b). You have also submitted no comments or arguments in support of withholding the "TLETS printout" nor have you labeled this information to indicate which exceptions apply to which parts of the copy. See Gov't Code § 552.301(e)(1)(A), (2). Nevertheless, we believe the "TLETS printout" consists of information that the department must withhold under section 552.101 in conjunction with the common law right to privacy. See *Industrial Foundation of the South v. Texas Industrial Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from the public as implicating the common law right to privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). This office has found that the personal financial information of an individual, not relating to a financial transaction between the individual and a governmental body, is normally protected by the common law right to privacy as meeting both prongs of the above-stated test. See Open Records Decision Nos. 600 (1992), 545 (1990). The "TLETS printout" consists entirely of personal financial information of an individual and accordingly must be withheld pursuant to section 552.101 in conjunction with the common law right to privacy.

As to the submitted offense report, you assert section 552.108 of the Government Code. In relevant part, section 552.108 provides:

- (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:

...

(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. You state that the information reflected in the submitted offense report pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review of the submitted report, we agree that the department has demonstrated the applicability of section 552.108(a)(2) to the information at issue. However, we note that section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing 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). In Open Records Decision No. 127 (1976), this office summarized the types of information made public pursuant to *Houston Chronicle*. See Open Records Decision No. 127 at 4 (1976). The department must release to the requestor this information, whether or not the information is found of the front page of the offense report. We additionally note that you have the discretion to release all or part of the remaining information contained in the offense report that is not otherwise confidential by law. Gov't Code § 552.007.

Finally, we address responsive information that you have not submitted to this office. We note that your request to this office references a "call card" which you assert is also excepted by section 552.108. However, you did not submit the "call card" for our review. Among other information, a governmental body is required to submit to this office, no later than the fifteenth business day after the date of receiving the request, a copy of the specific information requested or representative samples if the information is voluminous. See Gov't Code § 552.301(e)(1)(D). Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office all of the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. See Gov't Code § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). This office has long held that the protection of the privacy interests of a third party is a compelling reason sufficient to overcome the

section 552.302 presumption of openness. *See, e.g.* Open Records Decision No. 71 (1975). We cannot ascertain whether the “call card” is responsive to the first part of the request and therefore was the result of a criminal history compilation performed *by the department*. If so, we believe the department must withhold this information under section 552.101 as implicating the named individual’s right to privacy, as explained above. If, on the other hand, the “call card” is responsive to the second part of the request which did not require *the department* to compile criminal history information, we note that section 552.108 is a discretionary exception under the Act and thereby does not constitute a compelling reason sufficient to overcome the section 552.302 presumption of openness. Therefore, if the “call card” is responsive to the second part of the request, it must be released to the requestor.

In summary, the department must withhold all compilations performed by the department of the named individual’s criminal history, pursuant to section 552.101. As to the submitted information, the department must also withhold under section 552.101 in conjunction with the common law right to privacy the information contained in the “TLETS printout.” With the exception of the basic information contained in the submitted offense report, which must be released to the requestor pursuant to section 552.108(c), the department may withhold the offense report pursuant to section 552.108(a)(2). As to the “call card” that was not submitted for our review, this information must be withheld pursuant to section 552.101 if it is the result of a criminal history compilation performed by the department. If, on the other hand, the “call card” is responsive to the request for information regarding the specific incidents described by the requestor, this information must be released pursuant to section 552.302.

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

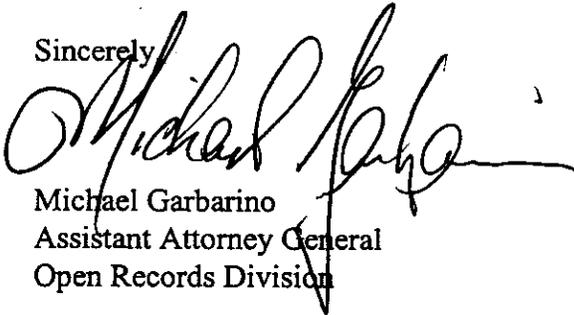
the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/pr

Ref: ID#139931

Encl. Submitted documents

cc: Ms. Diana Clawson
800 Westminster Drive
Richardson, Texas 75802
(w/o enclosures)