Office of the Attorney General · State of Texas
John Cornyn

April 26, 2001

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland Texas, 75046-9002

OR2001-1701

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146476.

The City of Garland (the "city") received a request for "[a]ny records/Arrest reports/Violation of Protective orders" involving the requestor and two other specified individuals at two specified addresses. You claim that the requested information is excepted from disclosure under section 552.101of the Government Code in conjunction with the common law right of privacy and in conjunction with section 261.201 of the Family Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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). Therefore, where a request seeks a compilation of an individual's law enforcement records, those records which indicate that the individual was arrested or was a suspect are protected by the common law right of privacy. The request seeks such a compilation and a portion of the submitted materials constitutes such a compilation. We have marked the records which are protected as a compilation of an individual's criminal history. This information must be withheld under section 552.101 of the Government Code.

Section 552.101 also protects information that is made confidential by statute. Section 261.201 of the Family Code governs release of information related to reports of child abuse or neglect. In pertinent part it reads:

> (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, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We are of the opinion that a portion of the submitted information consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code and is therefore confidential by statute. As you have not cited any specific rule that the city has adopted with regard to the release of this type of information, these records are presumed confidential in their entirety. *See* Open Records Decision No. 440 at 2 (1986). We have marked the documents that are within the ambit of section 261.201 of the Family Code. The city must withhold these documents under section 552.101 of the Government Code.

The submitted materials include documents that do not identify a suspect or arrestee and do not, on their face, appear to have been developed in an investigation made under chapter 261 of the Family Code. We have marked those documents. The city must release those documents to this requestor.

In summary, the city must withhold the information that we have marked as excepted from disclosure under section 552.101 and the city must release the remaining information.

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).

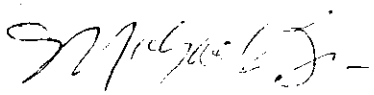
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Hadassah Schloss at 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 J. Burns
Assistant Attorney General
Open Records Division

MJB/rr

Ref: ID# 146476

Encl.: Submitted documents

cc: Ms. Dee Ann Quillin-Nelson
914 Alamo Lane
Garland, Texas 75040
(w/o enclosures)