



May 31, 2002

Ms. Denise Obinegbo
Open Records Specialist
Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2002-2951

Dear Ms. Obinegbo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163672.

The Richardson Police Department (the "department") received a request for information relating to all "incidences" involving three named individuals and a particular address during a specified time interval. The department states that it has released some of the requested information. The department claims that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

Initially, we must determine whether the department has complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information may be withheld from public disclosure. Section 552.301(b) provides that "[t]he governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the 10th business day after the date of receiving the written request." Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information."

You state that the department received this request for information on March 8, 2002. Under section 552.301(b), the department then had ten business days in which to request this

decision. The department's request for this decision is postmarked more than ten business days after the date of its receipt of the request for information. You inform us that the department contacted the requestor on March 8, 2002 for the purpose of obtaining an authorization for release of records and did not receive a response until March 22. We note that communications with a requestor for the purpose of clarifying or narrowing a request for information can toll a governmental body's deadline under section 552.301(b). *See* Gov't Code § 552.222; Open Records Decision No. 663 at 2-5 (1999) (addressing circumstances under which communications with requestor to clarify or narrow request for information will toll section 552.301(b) deadline). In this instance, however, the department did not contact the requestor for the purpose of narrowing or clarifying this request for information. The department has not otherwise accounted for its failure to request this decision within ten business days of its receipt of the request for information. Thus, the department has not demonstrated that it has complied with section 552.301 of the Government Code in requesting this decision. Therefore, the remaining requested information is presumed to be public and must be released unless there is a compelling reason to withhold any of that information from disclosure. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ).

The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or that third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The department claims that the remaining information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. Section 552.108 is a discretionary exception to disclosure that protects the governmental body's interests. The department waived its claim under section 552.108 in failing to comply with section 552.301. *See* Open Records Decision No. 177 at 3 (1977) (law enforcement exception may be waived). However, section 552.101 can provide a compelling reason for non-disclosure under section 552.302. Therefore, we will address the department's claim under that exception.

We first note that this request, in part, is for law enforcement records involving three named individuals. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common-law right to privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency is asked to compile criminal history information relating to a particular individual, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993).

To the extent that this request is for unspecified information that involves the named individuals, the request implicates these individuals' privacy rights. As the authorized representative of one of these individuals, the requestor has a special right of access to any information that would implicate his client's right to privacy. *See Gov't Code § 552.023.*¹ However, the department must withhold any information that depicts the other individuals as suspects, arrestees, or defendants, other than information that also involves the specified address, under section 552.101 of the Government Code in conjunction with *Reporters Committee*.

Next, we address the department's claim under section 552.101. This exception also encompasses information that other statutes make confidential. The department raises section 552.101 in conjunction with section 261.201 of the Family Code. Chapter 261 of the Family Code governs investigations of suspected child abuse or neglect. Section 261.201 provides in relevant part:

(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.

Fam. Code § 261.201(a). We find that report no. 01-003366 consists of files, reports, records, communications, and working papers used or developed in an investigation made under chapter 261 of the Family Code. *See also* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). The department does not inform this office that it has adopted any rule that would allow the release of this report to this requestor. We thus assume that no such rule exists. Therefore, we conclude that report no. 01-003366 is excepted from disclosure in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.²

¹Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."

²We note that a parent or other legal representative of a victim of alleged child abuse or neglect may be entitled to obtain portions of the requested information from the Texas Department of Protective and Regulatory Services. *See* Fam. Code § 261.201(g).

The records that relate to the specified address also contain fingerprint information. Sections 559.001, 559.002, and 559.003 of the Government Code, which the Seventy-seventh Legislature enacted, provide as follows:

Sec. 559.001. DEFINITIONS. In this chapter:

- (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
- (2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 559.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

- (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
 - (A) the individual consents to the disclosure;
 - (B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or
 - (C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and
- (2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 559.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

Gov't Code §§ 559.001, .002, .003. We have marked the submitted fingerprint information that section 559.003 of the Government Code makes confidential. You do not indicate, nor does it appear to this office, that section 559.002 permits the disclosure of this information to this requestor. Therefore, the marked fingerprint information is excepted from disclosure under section 552.101 of the Government Code.

Criminal history record information ("CHRI") obtained from the National Crime Information Center ("NCIC") or the Texas Crime Information Center ("TCIC") is confidential under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code. The dissemination of CHRI obtained from the NCIC network is governed by federal law. Federal regulations prohibit the release to the general public of CHRI that is maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.") and (c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."); *see also* Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12. 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 CHRI except to another criminal justice agency for a criminal justice purpose. *See* Gov't Code § 411.089(b). The department may disclose any CHRI generated by the federal government or another state only as permitted by the federal regulations. The department must withhold any CHRI obtained from the Texas Department of Public Safety (the "DPS") or any other criminal justice agency as provided by subchapter F of chapter 411 of the Government Code.

Common-law privacy under section 552.101 also protects the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information that attorney general has determined to be private); *see also* Open Records Decision Nos. 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). The requestor has a special right of access to private information that relates only to his client. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). We have marked other information that the department must withhold under section 552.101 of the Government Code in conjunction with common-law privacy.

The submitted documents also contain two social security numbers. The requestor also has a right of access to his client's social security number under section 552.023. The other social security number may be excepted from disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security

number pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the department either obtained or maintains the social security number in question pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we have no basis for concluding that this social security number was obtained or is maintained pursuant to such a law and is therefore confidential under section 405(c)(2)(C)(viii)(I) of the federal law. We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing this social security number, the department should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

The submitted documents also contain Texas driver's license and license plate numbers. Section 552.130 of the Government Code provides in part:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1)-(2). The requestor has a special right of access to his client's Texas driver's license number under section 552.023. We have marked other Texas driver's license and license plate information that the department must withhold under section 552.130 of the Government Code.

In summary, any law enforcement information that depicts a named individual other than the requestor's client as a criminal suspect, arrestee, or defendant, other than information that also relates to the specified address, must be withheld under section 552.101 of the Government Code in conjunction with *Reporters Committee*. The department must withhold report no. 01-003366 under section 552.101 in conjunction with section 261.201 of the Family Code. The department must withhold the fingerprint information under section 552.101 in conjunction with section 559.002 of the Government Code. Criminal history record information obtained from the TCIC or NCIC networks is confidential under section 552.101 in conjunction with section 20.21 of title 28 of the Code of Federal Regulations and subchapter F of chapter 411 of the Government Code. Some of the submitted information must be withheld under section 552.101 in conjunction with common-law privacy. The social security number of an individual other than the requestor's client may be excepted from disclosure under section 552.101 in conjunction with federal law. The Texas driver's license and license plate numbers that do not relate to the

requestor's client must be withheld from disclosure under section 552.130. The department must release the rest of the information that relates to the specified address, including the information to which the requestor has a right of access under section 552.023. Should the department receive another request for this information from a person that would not have a special right of access to it, the department should resubmit this same information and request another decision.

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).

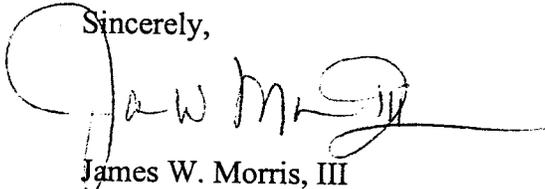
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

A handwritten signature in black ink, appearing to read "J W Morris III", with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 163672

Enc: Marked documents

c: Mr. Bruce W. Long
Walker & Long
7502 Greenville Avenue, Suite 320
Dallas, Texas 75231
(w/o enclosures)