



June 13, 2002

Captain Randy Traylor
West Division
Williamson County Sheriff's Department
508 South Rock Street
Georgetown, Texas 78626

OR2002-3199

Dear Captain Traylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164314.

The Williamson County Sheriff's Department (the "department") received a written request for all records, including booking sheet information, pertaining to the January 19, 1997 arrest of a named individual. The requestor also seeks all other department records concerning this individual.¹ You contend that some of the requested information is excepted from required public disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* that is of no legitimate concern to the public. *Id.* at 683-85.

We note at the outset that to the extent the requestor is seeking records in which the named individual is identified as either an arrestee or a suspect, the requestor is asking the department to compile the individual's criminal history. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on

¹You state that this aspect of the request was clarified in a conversation with the requestor. Because you have not submitted to this office any records pertaining to the January 1997 arrest, we assume the department has released this information to the requestor. If it has not, it must do so at this time. *See Gov't Code §§ 552.301, .302.*

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). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See Open Records Decision Nos. 616 (1993), 565 (1990)*. Accordingly, in this instance the department must withhold on privacy grounds all law-enforcement records, to the extent they exist, in which the named individual is identified as either an arrestee or a suspect.

You have submitted to this office one incident report in which the named individual is named as a witness. However, this report pertains to alleged delinquent conduct. Section 58.007(c) of the Family Code provides in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child may not be disclosed to the public and shall be:

- (1) kept separate from adult files and records; and
- (2) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Because Incident Report No. 96-06-1467J comes within the scope of section 58.007(c), we conclude that the department must withhold this report in its entirety pursuant to section 552.101 of the Government Code.

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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/RWP/sdk

Ref: ID# 164314

Enc: Submitted documents

c: Ms. Mary Ann Landers
7301 Avenue R
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(w/o enclosures)