OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

June 25, 2002

Ms. Charla S. Campbell
Records Clerk
Hunt County Sheriff's Office
2801 Stuart Street
Greenville, Texas 75401

OR2002-3460

Dear Ms. Campbell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164829.

The Hunt County Sheriff's Office (the "sheriff") received a request for a copy of the criminal file pertaining to a specified person. You indicate that you have released some responsive information to the requestor. You claim, however, that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, we note that the sheriff provides documentation showing that a letter requesting clarification of the request was sent by the sheriff and received by the requestor on April 8, 2002. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). The requestor subsequently clarified that he was seeking records, "including, but not limited to," criminal and investigative records that pertain to this person. Based on our review of the information that has been submitted to us, it appears that the sheriff received the requested clarification on April 15, 2002. Thus, the district had until April 24, 2002 to seek an opinion from us regarding any claim that the requested information was excepted from disclosure. *See* Open Records Decision No. 663 (1999) (providing for tolling of ten business day deadline for requesting attorney general decision while governmental body awaits clarification). Since the sheriff claimed that the requested information was excepted from disclosure under section 552.101 on April 19, 2002, we conclude that the sheriff timely complied with the procedural requirements of section 552.301 of the Government Code in requesting a decision from our office regarding

the submitted information. *See* Gov't Code § 552.301(b) (providing that governmental body must ask attorney general for decision as to whether requested information must be disclosed not later than tenth business day after date of receiving written request).

Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses the common-law right to privacy. Information must be withheld from disclosure under section 552.101 in conjunction with the common-law right to privacy when (1) the information is highly intimate or 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. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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 Committee for Freedom of the Press*, 489 U.S. 749 (1989). We note that the requestor in this instance is requesting copies of unspecified records concerning a specified individual. Therefore, the request requires the sheriff to compile reports relating to this individual. Based on the reasoning set out in *Reporters Committee*, we conclude that such a compilation implicates the specified individual's right to privacy to the extent that it includes arrests and investigations where the named individual is a suspect in a case. Accordingly, we conclude that the sheriff must withhold the information from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy to the extent that it reveals that the specified individual is a suspect, arrestee, or defendant in a case.

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;

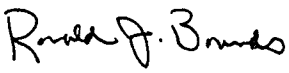
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 164829

Enc. Marked documents

cc: Mr. H. Craig Black
Attorney at Law
2606 Lee Street
Greenville, Texas 75401
(w/o enclosures)