



August 6, 2002

Ms. Patricia E. Carls  
City Attorney  
Brown & Carls  
106 East Sixth Street, Suite 550  
Austin, Texas 78701

OR2002-4302

Dear Ms. Carls:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166736.

The City of Georgetown's Police Department (the "department") received a request for records related to a named individual for a specified period of time. You state that some of the requested information has been released to the requestor. However, you claim that the remainder of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. *Id.* at 685. 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). 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 that indicate that the individual was arrested or was a suspect are protected by the common-law right of privacy. We agree that the request seeks a compilation of an individual's law enforcement records. Accordingly, based on section 552.101 in conjunction with the common-law right to privacy, you must withhold from disclosure the following Incident Record Report numbers: 3799, 25772, and 1021362.

You argue that incident report numbers 1010263 and 1018911 should not be released because the information is highly intimate and embarrassing and of no legitimate interest to the public. This office has previously concluded that information concerning domestic violence generally does not come within the scope of common-law privacy. Open Records Decision No. 611 (1992) ("An assault by one family member on another is a crime, not a family matter normally considered private."). After review of the two reports at issue, we find that the information is not protected from disclosure based on the common-law right of privacy. Accordingly, you may not withhold any information in these reports based on section 552.101 in conjunction with the common-law right of privacy.

You next argue that incident report numbers 15147, 1002562, 1019172, and 1018911 are excepted under section 552.108. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that these reports concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable. Accordingly, you may withhold from disclosure Incident Record Report numbers: 15147, 1002562, 1019172, and 1018911.

However, 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 Publ'g 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). Basic information includes the identification and description of the complainant. Open Records Decision No. 127 (1976).

In summary, the department must withhold the following incident reports based on section 552.101 in conjunction with common-law privacy: 3799, 25772, and 1021362. The department may not withhold any information in report numbers 1010263 or 1018911 based on section 552.101 in conjunction with the common-law right of privacy. With the exception of basic information, the department may withhold the following incident reports based on section 552.108(a)(2): 15147, 1002562, 1019172, and 1018911. The remaining information must be released to the requestor.

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/sdk

Ref: ID# 166736

Enc: Submitted documents

c: Ms. Misty Dominguez  
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(w/o enclosures)