



September 16, 2002

Ms. Leona Clay  
Administrative Assistant  
The City of Harker Heights  
305 Miller's Crossing  
Harker Heights, Texas 76548-5666

OR2002-5191

Dear Ms. Clay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168604.

The Harker Heights Police Department (the "department") received a request for "copies of all reports including incident reports regarding [the requestor and another named individual] (1999 to present)." The request also specifically requested case numbers 20-01596 and H20-019633. As you have not submitted case number H20-019633 for our review, we assume that you have released this case to the extent that it exists. If you have not released it, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302. You inform us that you have released some responsive information to the requestor but claim that the information that you have submitted is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we address the portion of the request that seeks any and all records regarding a named individual other than the requestor. Section 552.101 of the Government Code 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 Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if it (1) contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) 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). In this instance, in addition to asking for information relating to specified case numbers, the requestor asks the department to compile all other information concerning a named individual. To the extent the requestor asks the department to compile information about this individual, the individual's right to privacy is implicated. Thus, if the department has any records, other than the specifically requested cases, in which the named individual is portrayed as a suspect, defendant, or arrestee, the department must withhold such information under common law privacy as encompassed by section 552.101 of the Government Code. *See id.* We note, however, that the requestor has a special right of access to a compilation of her own criminal history, to the extent that it exists. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates on grounds that information is considered confidential by privacy principles).

We now address your arguments regarding section 552.108 of the Government Code in relation to the two submitted reports. This section provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2), (b)(1), (2). Generally speaking, subsections 552.108(a)(1) and (a)(2) are mutually exclusive. Subsection 552.108(a)(1) protects information that pertains to a pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information relating to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication. A governmental body claiming section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). On the other hand, 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.

In this instance you claim that the submitted information is excepted from disclosure under 552.108 because "the release of the information would interfere with the detection, investigation or prosecution of crime only in relation to an investigation which has not

resulted in a conviction or deferred adjudication.” Because you have provided this office with conflicting arguments and the documents themselves do not reflect the status of these two cases, we are uncertain whether you are claiming section 552.108(a)(1) or 552.108(a)(2). Thus, we find that you have not demonstrated the applicability of section 552.108. Therefore, the department may not withhold any of the submitted information under section 552.108.

We note, however, that one of the submitted reports contains the Texas driver’s license number of an individual other than the requestor. Section 552.130 of the Government Code exempts from disclosure information relating to “a motor vehicle operator’s or driver’s license or permit issued by an agency of this state.” Gov’t Code § 552.130(a)(1). Therefore the department must withhold the driver’s license information, which we have marked, in accordance with section 552.130.<sup>1</sup>

In summary, the department must withhold, to the extent they exist, any records, other than the specifically requested cases, in which the other named individual is portrayed as a suspect, defendant, or arrestee. The driver’s license number that we have marked must also be withheld. All other information must be released.

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

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<sup>1</sup>We note that the submitted information includes the requestor’s driver’s license and social security numbers. As the laws protecting these types of information are designed to protect an individual’s privacy interest, the requestor has a special right of access to her own information. *See* Gov’t Code § 552.023.

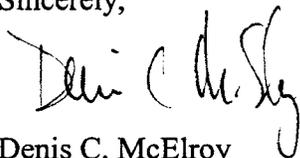
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to 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,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/seg

Ref: ID# 168604

Enc. Submitted documents

c: Ms. Isabella Hilfman  
P.O. Box 2836  
Harker Heights, Texas 76548  
(w/o enclosures)