OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

October 7, 2002

Ms. Larissa T. Roeder
Assistant District Attorney
Dallas County
133 North Industrial Boulevard, LB 19
Dallas, Texas 75207-4399

OR2002-5649

Dear Ms. Roeder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170331.

The Dallas County District Attorney's Office (the "district attorney") received a request for each and every file or record maintained by the district attorney regarding a named individual, including information pertaining to a specified incident. You state in your response letter to the requestor, submitted for our review as Exhibit 5, that the district attorney does not possess the videotape referenced in the request. We note that the Public Information Act does not ordinarily require a governmental body to release information that was not within its possession or control when it received a request. Open Records Decision Nos. 558 (1990), 499 (1988). You claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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), *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. 540 S.W.2d at 685. When a law enforcement agency is asked to compile a particular individual's criminal history information, 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). In part, this request is for unspecified prosecutorial records that pertain to a named individual. That aspect of this request implicates the individual's right to privacy. Therefore, to the extent the district attorney maintains law enforcement records that depict this individual as a suspect, arrestee, or defendant, apart from those relating to cause number MA01-013522 to which the requestor specifically refers, the district attorney must withhold any such files in their entirety under section 552.101 of the Government Code in conjunction with *Reporters Committee*.

Next, you argue that the district attorney's criminal litigation file in cause number MA01-012522 is excepted from disclosure under section 552.108 of the Government Code. You state that you have released basic front page information regarding the incident giving rise to this litigation. *See generally* Gov't Code § 552.108(c); *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); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). With respect to the remaining information in the district attorney's criminal litigation file, section 552.108(a)(2) of the Government Code excepts from disclosure information that deals with the prosecution of crime in relation to an investigation that concluded in a final 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 inform us, and provide documentation showing, that cause number MA01-012522 was dismissed, and you therefore assert that the requested information pertains to a case that concluded in a final result other than conviction or deferred adjudication. Based on your representations and our review, we agree that section 552.108(a)(2) is applicable. Accordingly, we determine you may withhold the district attorney's case file in cause number MA01-012522 under section 552.108(a)(2) of the Government Code.[1] Because we are able to make a determination under section 552.108(a)(2), we do reach your other arguments under section 552.108 of the Government Code or your claim under section 552.111 of the Government Code.

In summary, with the exception of basic information, the district attorney may withhold the case file in cause number MA01-012522 pursuant to section 552.108(a)(2) of the

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[1] You ask this office to issue you a previous determination for information relating to cases that did not result in a conviction or deferred adjudication. We decline to issue you a previous determination for such information at this time.

Government Code. We note that you have the discretion to release all or part of the case file in cause number MA01-012522 that is not otherwise confidential by law. Gov't Code § 552.007. To the extent the district attorney maintains any other law enforcement records depicting the individual at issue as a suspect, arrestee, or defendant, the district attorney must withhold such files pursuant to section 552.101 of the Government Code and *Reporters Committee.*

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,

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 170331

Enc: Submitted documents

c: Ms. Jo Kay Morreale
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(w/o enclosures)