OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 28, 2003

Lieutenant Wyman Hopkins
Support Services
Rosenberg Police Department
2120 Fourth Street
Rosenberg, Texas 77471

OR2003-0585

Dear Lt. Hopkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175592.

The Rosenberg Police Department (the "department") received a request for "all reports" pertaining to a named individual and for information relating to several specified case numbers. You indicate that the department has released some of the requested information. You claim, however, that other responsive information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Initially, we address the request for "all reports" that pertain to the named individual. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common-law right to privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency is asked to compile criminal history information that involves a particular individual, 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).

This request, in part, is for unspecified law enforcement records that involve the named individual. In that respect, this request implicates the individual's right to privacy. Therefore, to the extent that the department maintains any records that depict the named individual as a suspect, arrestee, or defendant, other than the specific information to which the requestor seeks access, all such records are private under *Reporters Committee* and must be withheld from the public under section 552.101 of the Government Code. We note, however, that an authorized representative of an individual to whom private information pertains has a special right of access to such information. *See* Gov't Code § 552.023.[1] Information to which a requestor has a right of access under section 552.023 may not be withheld from that person on privacy grounds.[2]

Next, we address your claim under section 552.108 with regard to the submitted information relating to case number 1996-00014484. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to that information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You represent to this office that the submitted information relates to an open and active investigation. It appears to this office, however, that this information relates to an instance in which the applicable statute of limitations has expired. *See* Penal Code § 22.01(C); Crim. Proc. Code art. 12.02. Thus, the information at issue contradicts your representation with regard to this information. You have not otherwise demonstrated, nor is it clear to this office, how the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See 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) (court delineates law enforcement interests that are present in active cases). We therefore conclude that you may not withhold the information relating to case number 1996-00014484 under section 552.108.

We note, however, that this information includes social security numbers. A social security number may be excepted from public disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number pursuant to any

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[1]Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."

[2]*See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself).

provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that any social security number contained in the submitted information is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes the department to obtain or maintain a social security number. Thus, we have no basis for concluding that any social security number contained in the submitted information was obtained or is maintained pursuant to such a law and is therefore confidential under the federal law. Furthermore, the requestor may be the authorized representative of one of the individuals to whom the submitted social security numbers pertain. If so, then the requestor has a special right of access to that individual's social security number under section 552.023. Information to which the requestor has a right of access under section 552.023 may not be withheld from him under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. Otherwise, we caution the department that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing a social security number, the department should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

The submitted information also includes a Texas driver's license number. Section 552.130 of the Government Code excepts from disclosure information that relates 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). A Texas driver's license number must be withheld from the public under section 552.130.

In summary, any unspecified law enforcement records maintained by the department that depict the named individual as a suspect, arrestee, or defendant are private under *Reporters Committee* and must be withheld from the public under section 552.101 of the Government Code. A social security number may be excepted from public disclosure under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. A Texas driver's license number must be withheld from the public under section 552.130. The department must release the rest of the submitted information to the requestor. The requestor may have a special right of access under section 552.023 to information that must be withheld from the public under section 552.101.

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).

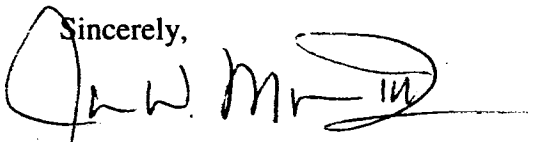
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 175592

Enc: Submitted documents

c: Mr. Steve Davis
2713 Bamore Road
Rosenberg, Texas 77471
(w/o enclosures)