



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

February 6, 2003

Mr. Brad Norton
Assistant City Attorney
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR2003-0805

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178415.

The City of Austin (the "city") received a request for all public records regarding Gamaliel Coria. You claim that the requested 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." Section 552.101 encompasses common-law privacy. 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). 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. In this instance, because the requestor asks for all information concerning Gamaliel Coria, we believe his individual right to privacy has been implicated. Thus, where the named individual was arrested or is a possible suspect, we conclude that the city must withhold this information under common-law privacy as encompassed by section 552.101 of the Government Code. *See id.* However, where the named individual is a victim or a witness, such information is not confidential under common-law privacy and may not be withheld under section 552.101. Therefore, offense report numbers 97 1120629 and 97 0720040 may not be withheld under section 552.101.

We note, however, that some of the information in offense report number 97 1120629 must be withheld under section 552.130 of the Government Code. Section 552.130 of the

Government Code excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, the city must withhold the information we have marked in offense report number 97 1120629 from public disclosure pursuant to section 552.130. The remaining information pertaining to offense report number 97 1120629 must be released.

Finally, you indicate that report number 97 0720040 is excepted from disclosure based on section 552.108 of the Government Code. 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. Based on the information you provided, we understand you to assert that the requested information pertains to a closed criminal investigation that concluded in a result other than a conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable.

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 Publishing Company 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). Thus, with the exception of the basic front page offense and arrest information, you may withhold report number 97 0720040 from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

To summarize: (1) we have marked the documents which must be withheld in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information marked in offense report number 97 1120629 must be withheld under section 552.130 of the Government Code; (3) with the exception of the basic offense and arrest information, report number 97 0720040 may be withheld under section 552.108(a)(2) of the Government Code.

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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt