OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

March 11, 2003

Mr. Harold Willard
Police Legal Advisor
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2003-1601

Dear Mr. Willard:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177674.

The Lubbock Police Department (the "department") received a request for "any reports or call sheets on domestic disturbance or assaults involving the following parties together . . . ." The request goes on to list three individuals, a particular address, and a specific timeframe. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common law privacy. We have considered the exception 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." This section encompasses information protected by the common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). Common law privacy protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Id.* 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). To the extent the request asks for records of "any reports or call sheets" involving the named individuals, it seeks a compilation of the individuals' criminal history, and the requested information must be withheld under section 552.101 in conjunction with the common law privacy concerns expressed in *Reporters Committee*.

However, the request also asks for information about the named individuals at a specific location, during a particular time, and concerning specified conduct. We believe that, in this regard, the request does not require the department to provide a compilation for purposes of

Reporters Committee. Furthermore, you have submitted two call sheets in which none of the named individuals is portrayed as an arrestee, suspect, or defendant. Accordingly, we find that report number 99-022093 and these call sheets are not made confidential under the holding in *Reporters Committee* and are therefore not excepted from disclosure under section 552.101 in conjunction with common law privacy.

We note, however, that report number 99-022093 and one of the call sheets contain information that is excepted from disclosure under section 552.130 of the Government Code. This section provides that "[i]nformation is excepted from [required public disclosure] if the information relates to . . . (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state." We have marked driver's license numbers that must be withheld under section 552.130 if they refer to licenses issued by an agency of this state.

We also note that report number 99-022093 contains a social security number. 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 section encompasses amendments to the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), that make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, to the extent the department maintains records, other than the specifically requested report, in which the named individuals are portrayed as suspects, defendants, or arrestees, the department must withhold such information. In addition, the marked driver's license numbers in report number 99-022093 and the submitted call sheet must be withheld if they refer to licenses issued by an authorized agency of this state. The department must also withhold the social security number in the report if the number was obtained or maintained pursuant to a law enacted on or after October 1, 1990. All other information in report number 99-022093 and the two call sheets 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).

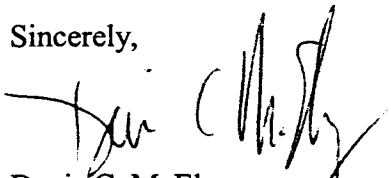
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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 Dep't of Pub. 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/lmt

Ref: ID# 177674

Enc. Submitted documents

c: Mr. Steven Garcia
C/O Women's Protective Services
P.O. Box 54089
Lubbock, Texas 79453
(w/o enclosures)