



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

June 5, 2003

Mr. Michael G. Morris  
Attorney at Law  
5350 South Staples, Suite 222  
Corpus Christi, Texas 78411-4684

OR2003-3850

Dear Mr. Morris:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182268.

The Port Aransas Police Department (the "department"), which you represent, received a request for information pertaining to a specified person and dispatch calls made to the department for a specified period of time.<sup>1</sup> You claim that the requested information is excepted from disclosure pursuant to sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim.

Initially, we note that you indicate through a letter that you sent to the requestor that you sought clarification of the request from the requestor as it pertained to item five of the request. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). Based on our review of the information that has been submitted to us, it does not appear, however, that you had yet received the requested clarification as of

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<sup>1</sup> Although you note that the individual who received the request is not the public information officer for the department, we note that the Public Information Act (the "Act") only requires that a request be reasonably identifiable as a request for public records for it to be considered a valid request that is received by a governmental body under the Act. *See* Open Records Decision Nos. 497 at 3 (1988), 44 at 2 (1974); *see also* Gov't Code § 552.202.

the date you requested a ruling from this office. Thus, we conclude that the department need not respond to the request as it pertains to item five of the request until it receives the requestor's clarification. We note, however, that when the department receives the clarification, it must seek a ruling from this office before withholding from the requestor any information that may be responsive to the clarified request. *See Open Records Decision No. 663 (1999) (providing for tolling of ten business day deadline for requesting attorney general decision while governmental body awaits clarification).*

We now address the requested information. Section 552.101 of the Government Code exempts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See Gov't Code § 552.101.* Section 552.101 encompasses information that is protected from disclosure by the common-law right to privacy. Information must be withheld from disclosure under the common-law right to privacy when (1) it is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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 Committee for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor seeks copies of unspecified criminal records in which a specified individual is identified. Thus, the request requires the department to compile information relating to this individual. Based on the reasoning set out in *Reporters Committee*, we conclude that such a compilation implicates the specified individual's right to privacy to the extent that it includes investigations where the named individual was a suspect, arrestee, or defendant in a case. Accordingly, we conclude that to the extent that the department maintains responsive information that reveals that the specified individual was a suspect, arrestee, or defendant in a case, such information must be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.<sup>2</sup>

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<sup>2</sup> Because we base our ruling on section 552.101, we need not address your claimed exceptions to disclosure.

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).

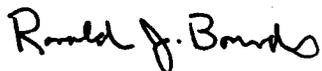
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

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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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 182268

Enc. Submitted documents

c: Mr. Charles C. Smith  
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(w/o enclosures)