



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

July 9, 2003

Ms. Leona Clay  
Administrative Assistant  
The City of Harker Heights  
305 Miller's Crossing  
Harker Heights, Texas 76548-5666

OR2003-4734

Dear Ms. Clay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183980.

The Harker Heights Police Department (the "department") received a request for "any and all records, incident reports, officer's notes, or other documents memorializing complaints made by or against either [the requestor's client or another named individual.]" You state that some responsive information has been released to the requestor. You claim that other 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.

Initially, we address the portion of the request that seeks any and all records regarding a named individual other than the requestor's client. 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 the common law right to privacy, which protects information that (1) contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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). In this instance, the requestor asks the department to compile all information concerning his client and another named individual. To the extent the requestor asks the department to compile information about the second individual, the person's right to privacy is implicated. Thus, if the department has any records in which the second named individual is portrayed as a suspect, defendant, or

arrestee, the department must withhold such information under common law privacy as encompassed by section 552.101 of the Government Code. *See id.* We note, however, that the requestor has a special right of access to a compilation of his client's criminal history, to the extent such information exists. *See Gov't Code § 552.023(b)* (governmental body may not deny access to person to whom information relates, or that person's representative, on grounds that information is considered confidential by privacy principles).

Section 552.108 provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2). Generally speaking, subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body claiming section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); see also Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977).* 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 indicate, and the documents reflect, that report number 03-00380 pertains to a case that has concluded in a result other than conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to this report.

However, section 552.108 does not except 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 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). Thus, the department must release the types of information that are considered to be front page report information, even if this information is not actually located on the front page of the report. *See Open Records Decision No. 127 (1976)*

(summarizing types of information made public by *Houston Chronicle*). Although section 552.108(a)(2) authorizes the department to withhold the remainder of report number 03-00380, it may choose to release all or part of this report unless such information is otherwise confidential by law. See Gov't Code § 552.007.

You also indicate that report number 03-00152 relates to a case that has concluded in a result other than conviction or deferred adjudication. However, the last entries in the report itself indicate that the case has been referred to the "the staff at city courts to review for final disposition." The report does not indicate, nor do you explain, what the "final disposition" of this case was. We therefore conclude that you have failed to establish that report number 03-00152 pertains "to an investigation that did not result in conviction or deferred adjudication," and it may not be withheld on the basis of section 552.108(a)(2).

We note, however, that report number 03-00152 includes a Texas-issued driver's license number. Section 552.130 of the Government Code requires the department to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Consequently, pursuant to section 552.130, the department must withhold the Texas-issued driver's license number that we have marked.

In summary, to the extent records exist in which the second named individual is portrayed as a suspect, defendant, or arrestee, the department must withhold such records. Report number 03-00380 may be withheld, except for basic information, pursuant to section 552.108(a)(2). Report number 03-00152 must be released to this requestor after the marked Texas-issued driver's license number has been redacted in accordance with section 552.130.

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

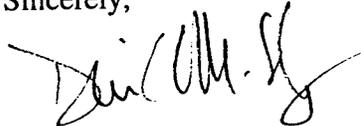
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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# 183980

Enc. Submitted documents

c: Mr. Roy L. Reeves  
Corbin & Pritchard  
603 North Eighth Street  
Killeen, Texas 76541  
(w/o enclosures)