



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

July 22, 2003

Mr. Ken Johnson  
Assistant City Attorney  
City of Waco  
Legal Services  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2003-5042

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184650.

The Waco Police Department (the "department") received a request for all documents pertaining to a named individual. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. 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 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). In this instance, the requestor seeks unspecified information in which a named individual is identified. Thus, the request requires the department to compile information regarding the named individual. Based on the reasoning set out in *Reporters Committee*, such a compilation implicates an individual's right to privacy to the extent that it includes arrests and investigations where the individual is a suspect, arrestee, or defendant in a case. Accordingly, to the extent that the department maintains information relating to arrests and investigations where the individual is a suspect, arrestee, or defendant, we conclude that such information must be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

We now turn to your claim under section 552.108 of the Government Code. Section 552.108 provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

....

(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 . . . .

You claim that offense report number 97-079571 is excepted from disclosure pursuant to section 552.108(a)(2). A governmental body that raises section 552.108 must sufficiently explain, if the responsive information does not provide an explanation on its face, how and why section 552.108 is applicable to the 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). Specifically, 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 our review of this offense report, we find that it pertains to a closed criminal investigation that did not result in conviction or deferred adjudication. Therefore, we conclude that section 552.108(a)(2) is applicable to this report.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic "front-page" offense and arrest report 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). The department must therefore release basic information, including a detailed description of the offense, whether or not the information actually appears on the front page of the police report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127

at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the remaining information in offense report number 97-079571 under section 552.108(a)(2). As we are able to make this determination, we do not address your arguments under section 552.101 or 552.130 in relation to this information.

In summary, to the extent that the department maintains information relating to arrests and investigations where the individual named in the request is a suspect, arrestee, or defendant, such information must be withheld in its entirety pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The department may withhold offense report number 97-079571 under section 552.108, with the exception of basic information, which 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,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/lmt

Ref: ID# 184650

Enc. Submitted documents

c: Ms. Susan McKibben  
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(w/o enclosures)