



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

August 7, 2003

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

OR2003-5525

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# 185568.

The Austin Police Department (the "department") received a request for information concerning an animal cruelty offense involving a named individual during a specified time period, another particular report involving the same individual, and "[a]ny other reports filed against" the individual. 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 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 if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (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). However, when a requestor asks for information relating to a particular incident, the request does not implicate the privacy concerns expressed in *Reporters Committee* because complying with the request does not require the governmental body to compile unspecified records. Therefore, to the extent that the department maintains records in which the named individual is portrayed as a suspect, defendant, or arrestee, it must generally withhold such information pursuant to

section 552.101 and the common law privacy concerns expressed in *Reporters Committee*. However, because report numbers 03-4922855 and 96-3291371 were specifically requested, they may not be withheld on this basis.

We turn now to the two specifically requested reports. We note that you have not submitted report 03-4922855 for our review. You state that “[o]ne report that is not excepted from disclosure has been released.” We assume report 03-4922855 is the report to which this statement refers. If you have not already released report 03-4922855, you must do so at this time. *See* Gov’t Code §§ 552.301(e)(1)(D) (governmental body seeking to withhold requested information must, within fifteen business days of receiving request, submit to this office copy of specific information requested or representative samples), .302 (governmental body’s failure to comply with procedural requirements of section 552.301 results in legal presumption that requested information is public and must be released unless governmental body demonstrates compelling reason to withhold information from disclosure); Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions are intended to protect only interests of governmental body as distinct from exceptions intended to protect information deemed confidential by law or interests of third parties); *cf.* Open Records Decision 586 (1991) (deciding that need of *another* governmental body to withhold requested information under predecessor to section 552.108 may provide compelling reason for nondisclosure).

Finally, we address report number 96-3291371 and note that it 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 we have marked. As you claim no other exception for report number 96-3291371 and it is not otherwise confidential by law, it must be released.

In summary, to the extent the department maintains records, other than the two specifically requested incident reports, in which the named individual is portrayed as a suspect, defendant, or arrestee, it must withhold such information pursuant to section 552.101 and common law privacy. If you have not already released report number 03-4922855, you must do so. The marked driver’s license number in report number 96-3291371 must be withheld under section 552.130. The remainder of this report 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).

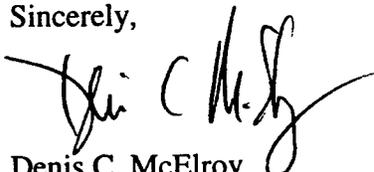
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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/sdk

Ref: ID# 185568

Enc. Submitted documents

c: Ms. Macie Booker
119 Allenhurst
San Antonio, Texas 78227
(w/o enclosures)