



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 5, 2003

Mr. T. Daniel Santee II  
First Assistant City Attorney  
City of Abilene  
P. O. Box 60  
Abilene, Texas 79604

OR2003-7960

Dear Mr. Santee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190643.

The Abilene Police Department (the "department") received a request for information pertaining to "current investigations or responses to [a specified person's] address" and with reference to two specified department reports. You claim that some of the requested information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have 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. *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 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 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 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 partly seeks unspecified investigative records in which a specified individual is identified. Thus, in part, 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 an unspecified compilation implicates the 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 information that is responsive to the unspecified records aspect of this request 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.

You claim that a portion of the submitted information, which we have marked, is excepted from disclosure pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. Section 552.101 also encompasses information that is made confidential by other statutes. Chapter 261 of the Family Code is applicable to information that relates to reports and investigations of alleged or suspected child abuse or neglect. Section 261.201 provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Based on your representations and our review of this portion of the submitted information, we find that this particular information concerns a report and investigation of alleged or suspected abuse under chapter 261. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). We assume that the department has not adopted a policy that would allow for the release of this information in this instance. Accordingly, we conclude that the department must withhold the entirety of the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

You also claim that department report number 03-015962 is excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) protects records pertaining to criminal investigations or prosecutions that have concluded in a final result other than conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). You indicate that department report number 03-015962 concerns an investigation in which no further action is anticipated and which, thus, did not result in conviction or deferred adjudication. Thus, we understand from your representations that department report number 03-015962 pertains to a criminal investigation that has concluded in a final result

other than conviction or deferred adjudication. Consequently, we find that section 552.108(a)(2) is applicable to department report number 03-015962.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* 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). *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public). Accordingly, with the exception of basic information that must be released, we conclude that the department may withhold department report number 03-5962 pursuant to section 552.108(a)(2) of the Government Code. We note, however, that the department maintains the discretion to release all or part of this particular information that is not otherwise confidential by law. *See* Gov't Code § 552.007.

In summary, to the extent that the department maintains information that is responsive to the unspecified records aspect of this request 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. The department must withhold the information that we have marked pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. With the exception of basic information that must be released, the department may withhold department report number 03-015962 pursuant to section 552.108(a)(2) of the Government Code.

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

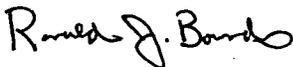
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 190643

Enc. Marked documents

c: Mr. Roy Votaw  
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Tye, Texas 79563  
(w/o enclosures)