



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2003

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2003-8983

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192586.

The City of El Paso Police Department (the "department") received a request for "all records, including but not limited to sex-registration records" of a named individual. You note that you will release some of the responsive information. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have reviewed the representative sample of information you submitted and considered the exceptions you claim.¹

First, you note that "one of the documents on file is a Texas Peace Officer's Accident Report, DPS form ST-3." Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.*

¹ We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

However, in this case the department did not submit the report for our review. Therefore, we have no basis for finding the information confidential. *See* Gov't Code §§ 552.301, .302. Thus, the department must release this accident report to the requestor. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Pursuant to *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), where an individual's criminal history information has been compiled or summarized by a governmental entity, the information takes on a character that implicates the individual's right of privacy in a manner that the same individual records in an uncompiled state do not. Thus, when a requestor asks for unspecified information concerning a certain named individual and that individual is a possible suspect, arrestee, or defendant, a law enforcement agency must withhold this information under section 552.101 because that individual's privacy right has been implicated. *See id.* In this instance, we believe that the named person's right to privacy has been implicated by the request. Thus, any records in which the named person is identified as a suspect, arrestee, or offender must be withheld in its entirety under section 552.101 of the Government Code and *Reporters Committee*.² We note, however, that information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common-law privacy and *Reporters Committee*. *Cf.* Gov't Code § 411.082(2)(B).

You also argue that some of the requested information is excepted from disclosure under section 552.101 in conjunction with Chapter 62 of the Code of Criminal Procedure. Article 62.02(b) of the Code of Criminal Procedure requires a sex offender registrant to provide the Texas Department of Public Safety ("DPS") certain enumerated categories of information, including the person's full name; each alias; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver's license number; shoe size; home address; a photograph of the person; a complete set of the person's fingerprints; the type of offense the person was convicted of; the age of the victim; the date of the conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; and any other information required by DPS. *See* Crim. Proc. Code art. 62.02(b). This information is public information with the exception of the person's social security number, driver's license number, telephone number, all information required by DPS outside of the enumerated categories of information, and any information that would identify the victim of the offense for which the person is subject to registration. *See* Crim. Proc. Code art. 62.08(b).

² As our ruling under *Reporters Committee* is dispositive of the information found in Exhibits E, F, G-1 and G-2, we do not address your other section 552.101 and section 552.130 arguments regarding these exhibits.

You have submitted the registration forms for our review, which require the offender to provide information regarding the offender's occupation; name of the offender's employer; place of birth; vehicle information; name and address of nearest relative; scars, marks, and tattoos; teeth; hair type; blood type; defects; speech; complex; facial; marital status; spouse's name and address; and the name and address of the offender's parents. You contend, however, that because this list of information is outside the enumerated categories of information under article 62.02(b), this information is "other information required by the department" as referenced in article 62.02(b)(6). You therefore contend that pursuant to article 62.08(b)(2), this information is not subject to public disclosure. Based on your representations and our review, we agree that some of the information in the registration forms is not subject to public disclosure under section 552.101 in conjunction with article 62.08(b) of the Code of Criminal Procedure. We have marked this information accordingly.

You also claim that the registration forms contain biometric identifiers that are confidential under sections 560.001, 560.002, and 560.003 of the Government Code. These sections provide as follows:

Sec. 560.001. DEFINITIONS. In this chapter:

- (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
- (2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 560.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

- (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
 - (A) the individual consents to the disclosure;
 - (B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or
 - (C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 560.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

Gov't Code §§ 560.001, 560.002, 560.003.³ Section 560.002 thus provides that a governmental body may not disclose a biometric identifier to another person unless disclosure is required or permitted by a federal or state statute outside of chapter 552 of the Government Code. Gov't Code § 560.002(1)(B). As noted above, article 62.08(b) of the Code of Criminal Procedure designates as public information all information required to be provided to the DPS by a sex offender registrant under article 62.02(b), with certain exceptions that do not include the individual's set of fingerprints. Thus, we conclude that a state statute outside of chapter 552 of the Government Code requires disclosure of the fingerprint information in this instance, and therefore, it must be released to the requestor. See Crim. Proc. Code art. 62.08; see also Gov't Code § 560.002(1)(B) (disclosure required by state law other than Public Information Act).

In summary, any records in which the named person is identified as a suspect, arrestee, or offender must be withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Information we have marked regarding the sex offender is excepted under article 62.08(b) of the Code of Criminal Procedure. The remaining information must be released to the requestor.

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

³ These sections, formerly found at chapter 559 of the Government Code as sections 559.001, 559.002, and 559.003, were renumbered by the Regular Session of the Seventy-eighth Legislature, effective September 1, 2003. See Act of May 20, 2003, 78th Leg., R.S., ch. 1275, § 2 (78), 2003 Tex. Sess. Law Serv. 4140, 4144.

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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 192586

Enc. Submitted documents

c: Ms. Theresa Caballero
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(w/o enclosures)