



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 3, 2004

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

OR2004-0780

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# 195411.

The City of Austin Police Department (the "department") received a request for any offense reports on "closed cases" found pursuant to a "name search" of a named individual and a "location search" on a specified location. The city received a second request from the same requestor for a "name search" of another named individual. You claim that the 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 note that some of the submitted incident reports pertain to pending investigations and are not responsive to the request, which seeks the offense reports of "closed cases with no charges pending." This decision is not applicable to the non-responsive reports, which we have marked, and the department need not release these reports.

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, information that refers to an individual solely as a victim, witness, or involved person is not private under *Reporters Committee* and may not be withheld under section 552.101 on that basis.

In this instance, the requestor asks the department for "any offense reports" on closed cases found pursuant to a "name search" of two named individuals. Thus, this request implicates the named individuals' right to privacy. Therefore, to the extent that the department maintains records in which either of the named individuals is portrayed as a suspect, defendant, or arrestee, it must withhold such information in accordance with section 552.101 and the common-law right to privacy.

Section 552.101 also encompasses information protected by other statutes, such as section 58.007 of the Family Code. This section governs law enforcement records that relate to juvenile offenders and provides:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). We have reviewed the submitted information and find that incident report numbers 98-2380152, 97-4149797, 98-0191033, 99-0040840, and 99-4103065 involve allegations of juvenile conduct that occurred after September 1, 1997. *See* Fam. Code § 51.02(2) (providing that in title 3 of Family Code, "child" means person who is ten years of age or older and under seventeen years of age). Thus, these reports are subject to section 58.007. Because none of the exceptions in section 58.007 appear to apply, these reports are confidential in their entirety in accordance with section 58.007(c) of the Family Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code.

We note that incident report numbers 98-4993213 and 98-4091327 are confidential under section 261.201 of the Family Code. Section 261.201 provides in pertinent part as follows:

(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). Upon review, we find that these incident reports constitute files, records, communications, or working papers used or developed by the department in an investigation made under chapter 261 of the Family Code. Thus, these reports come within the scope of section 261.201 of the Family Code. You do not inform us that the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, we conclude that incident report numbers 98-4993213 and 98-4091327 are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold these incident reports in their entirety under section 552.101 of the Government Code in conjunction with section 261.201.

Next, you argue that some of the submitted incident reports are excepted from disclosure under section 552.108 of the Government Code. Section 552.108 provides as follows:

(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:

...

(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)(2). 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. *See* Gov't Code §§ 552.108(a)(2), .301(e)(1)(A).

You indicate that incident reports 98-1221510, 2003-921461164, 2001-921481600, and 99-902481087 pertain to cases that concluded in a result other than conviction or deferred adjudication. Based on your representations, we agree that section 552.108(a)(2) is applicable to these records.

We note, however, that basic information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston*

*Chronicle*, 531 S.W.2d 177; Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be basic front page offense report information, even if this information is not actually located on the front page of the offense report. Although section 552.108 authorizes you to withhold the remainder of incident reports 98-1221510, 2003-921461164, 2001-921481600, and 99-902481087 from disclosure, you may choose to release all or part of these reports that is not otherwise confidential by law. See Gov't Code § 552.007.

To summarize, we conclude that (1) to the extent that the department maintains records in which either of the named individuals is portrayed as a suspect, defendant, or arrestee, it must withhold such information in accordance with section 552.101 and the common-law right to privacy, (2) report numbers 98-2380152, 97-4149797, 98-0191033, 99-0040840, and 99-4103065 are confidential in their entirety in accordance with section 58.007(c) of the Family Code and must be withheld from disclosure pursuant to section 552.101, (3) report numbers 98-4993213 and 98-4091327 are confidential pursuant to section 552.101 in conjunction with section 261.201 of the Family Code, and (4) except for basic information, which must be released, the department may withhold reports 98-1221510, 2003-921461164, 2001-921481600, and 99-902481087 under section 552.108.

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,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/seg

Ref: ID# 195411

Enc. Submitted documents

c: Mr. Andrew Forsythe  
Williams & Forsythe  
1100 West Avenue  
Austin, Texas 78701  
(w/o enclosures)