



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 24, 2004

Mr. Steve D. Monté  
Assistant City Attorney  
Dallas Police Department  
1400 South Lamar Street  
Dallas Texas 75215-1801

OR2004-1363

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 196679.

The City of Dallas (the "city") received a request for all arrest and associated offense reports for a named individual dating back to 1990. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the common law right to privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the release 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 (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). In this instance, the requestor asks for all information concerning a certain person. In this case, we believe that the individual's right to privacy has been implicated. Thus, to the extent the city maintains records in which the named individual is a suspect, arrestee, or criminal defendant, we conclude that you must withhold this information under section 552.101 in conjunction with the common law right to privacy. *See id.*

You also request that this office issue a previous determination allowing the city to withhold under section 552.101 criminal history information responsive to a request for all information concerning a named individual. Having considered your request, we decide that this letter ruling shall serve as a previous determination under section 552.301(a) for such information. *See* Gov't Code § 552.301(a); *see also* Open Records Decision No. 673 (2001).

This previous determination applies only where the city receives a request for all records concerning a named individual, and the city maintains responsive records in which the named individual is listed as a suspect, arrestee, or criminal defendant. *See* Open Records Decision No. 673 at 7 (2001). However, pursuant to section 552.023 of the Government Code, the city must release such information to a requestor asking for his own records. Gov't Code § 552.023 (person or person's authorized representative has special right of access to information held by governmental body that relates to the person and is protected from public disclosure by laws intended to protect the person's privacy interests). This previous determination does not apply where the city receives a request for a specific police report. Additionally, this previous determination does not apply to records in which the named individual is a complainant or witness, or to information relating to routine traffic violations. *Cf.* Gov't Code § 411.082(2)(B) (the term "criminal history record information" does not include driving record information). Furthermore, if the responsive records include information that is made public by a special or specific statute, the city may not withhold such information under section 552.101 and must release the information. Gov't Code § 311.026. Examples of such information are arrest warrants and their supporting affidavits, Crim. Proc. Code art. 15.26, and an affidavit to support a search warrant if the search warrant has been executed, Crim. Proc. Code art. 18.01(b). Moreover, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the city need not ask for a decision from this office again with respect to this type of information requested of the city. *See* ORD 673 at 7.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. 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 of 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,



Melissa Vela-Martinez  
Assistant Attorney General  
Open Records Division

MVM/sdk

Ref: ID# 196679

Enc. Submitted documents

c: Mr. Mat Thomas  
P.O. Box 750116  
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(w/o enclosures)