ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 9, 2004

Mr. Ken Johnson
Assistant City Attorney
City of Waco - Legal Services
P.O. Box 2570
Waco, Texas 76022570

OR2004-1801

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197363.

The City of Waco (the "city") received two requests encompassing information pertaining to four named individuals. You claim that a portion of the responsive information is not subject to the Public Information Act (the "Act"). You claim that the remaining responsive information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we will address your assertion that the requested information includes judicial court records that are not subject to the Act. The Act generally requires the disclosure of information maintained by a "governmental body." *See* Gov't Code § 552.021. While the Act's definition of a "governmental body" is broad, it specifically excludes "the judiciary." *See* Gov't Code § 552.003(1) (A), (B). You have submitted responsive judicial court records from the Waco Municipal Court. To the extent these records are solely maintained by or for the judiciary, which is not a "governmental body" for purposes of the Act, this information is not subject to public disclosure under chapter 552 of the Government Code. Gov't Code § 552.0035 (access to information maintained by or for judiciary is governed by rules adopted by supreme court); *see* Tex. R. Jud. Admin. 12 (public access to judicial records). To the extent that the city maintains these records outside of municipal court records for other purposes, e.g., as part of a police department file, these records constitute public information subject to the Act and may only be withheld if an exception under the Act applies.

We must now address the procedural requirements of section 552.301 of the Government Code in regards to a portion of the requested information. Section 552.301(e) provides that a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e).

Upon review of the information submitted in response to the second request, we note that offense report number 00-022410 was responsive to the initial request for information dated December 15, 2003. Thus, the city was required to submit this information in response to the initial request for information by January 9, 2004. However, the city did not submit this information to us until January 13, 2004. Therefore, the city failed to comply with the procedural requirements of section 552.301 of the Government Code in regard to offense report number 00-022410.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information at issue is public. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Section 552.108 of the Government Code, which the city raises, is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision No. 177 (1977) (statutory predecessor to section 552.108 did not prohibit release of information). Under the present circumstances, the city's claim that offense report number 00-022410 is excepted from disclosure under section 552.108 does not constitute a compelling reason to withhold this information, and it may not be withheld on that basis. *But see* Open Records Decision No. 586 at 3 (1991) (need of another governmental body to withhold information under predecessor to section 552.108 provided compelling reason to withhold information). However, because section 552.101 of the Government Code can provide a compelling reason to withhold this information, we will address your section 552.101 argument with regard to this and the remaining requested information.

Section 552.101 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 requestors ask the city for all information regarding four named individuals. Thus, these requests implicate the named individuals' right to privacy. Therefore, to the extent that the city maintains records in which any 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. We note that offense report number 00-022410 identifies the named individual as a victim. Thus, this report is not excepted from disclosure under section 552.101 in conjunction with common-law privacy and must be released.

Next, you argue that some of the submitted incident reports are excepted from disclosure under section 552.108 of the Government Code, which provides in relevant part:

> (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted. . . 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; [and]
>
> . . .
>
> (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted. . . if:
>
> . . .
>
> (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(2). A governmental body claiming section 552.108(a)(2) or (b)(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), (b)(2), .301(e)(1)(A).

You indicate that the remaining submitted information in Exhibit 3 pertains to cases that concluded in a result other than conviction or deferred adjudication. Based on your representations and our review, 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 Publ'g 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); 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 this information found in Exhibit 3, you may choose to release all or part of this information that is not otherwise confidential by law. *See* Gov't Code § 552.007.

To summarize, we conclude that: 1) to the extent the submitted judicial court records are solely maintained by or for the judiciary, which is not a "governmental body" for purposes of the Act, this information is not subject to public disclosure under chapter 552 of the Government Code; 2) to the extent that the city maintains records in which any 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; 3) offense report number 00-022410 must be released; and 4) with the exception of basic information, which must be released, the city may withhold the remaining submitted reports found in Exhibit 3 under section 552.108. As our ruling is dispositive, we need not address your other claimed exception.

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# 197363

Enc. Submitted documents

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