



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 29, 2004

Mr. Brad Norton  
Assistant City Attorney  
City of Austin - Law Department  
P.O. Box 1088  
Austin, Texas 78767-8845

OR2004-2436

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID#198135.

The City of Austin (the "city") received a request for information pertaining to two individuals.<sup>1</sup> You claim that the requested 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.

We will first address your claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common law privacy. As you note in your brief to this office, 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*

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<sup>1</sup> We note that the requestor seeks to obtain all "handle bys" on closed cases dating from January 1, 1997 to the present relating to the two named individuals. You have forwarded to this office a number of police incident reports as responsive to the request. This office assumes that the term "handle by" is an informal term used within the police department to refer to incident reports.

*Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor asks for all information concerning two named persons. In this case, we believe that those individuals' right to privacy has been implicated. Thus, where the named individuals are possible suspects or arrestees, we conclude that you must withhold this information under common law privacy as encompassed by section 552.101 of the Government Code. *See id.*

Additionally, one other of the submitted incident reports contains information that implicates a named individual's common law right to privacy. Common law privacy also protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. As such, we have marked the portions of this particular incident report that must be withheld pursuant to common law privacy.

Section 552.101 also encompasses information protected by other statutes. You claim that some of the incident reports at issue are excepted from disclosure under section 552.101 in conjunction with section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(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.

Some of the incident reports at issue involve juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore,

these incident reports are confidential pursuant to section 58.007(c) of the Family Code. You must withhold the incident reports that we have marked from disclosure in their entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Because we have determined that these incident reports are excepted from disclosure under section 552.101 in conjunction with section 58.007 of the Family Code, we need not address the applicability of the other exceptions you have raised for these incident reports.

You also claim that some of the incident reports at issue are excepted from disclosure under section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201(a) of the Family Code provides 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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

A number of the incident reports at issue relate to allegations of child abuse and, therefore, are within the scope of section 261.201 of the Family Code. You have not indicated that the city has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the requested incident reports that relate to allegations of child abuse are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the city must withhold the incident reports we have marked from disclosure under section 552.101 of the Government Code as information made confidential by section 261.201(a). Because we have determined that these incident reports are excepted from disclosure under section 552.101 in conjunction with section 261.201 of the Family Code, we need not address the applicability of the other exceptions you have raised for these incident reports.

Finally, we will address your claim that some of the incident reports at issue are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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. Based on the information you provided, we understand you to assert that a number of the incident reports at issue relate to cases that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to the incident reports we have marked.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. 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). Thus, with the exception of the basic front page offense and arrest information, you may withhold the incident reports we have marked from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the city must withhold all incident reports in their entirety that we have grouped and marked as excepted from disclosure under section 552.101 in conjunction with the common law right to privacy or provisions of the Family Code. With the exception of the front page offense report information not otherwise confidential by law, the city may withhold the three incident reports we have grouped and marked as excepted under section 552.108(a)(2).

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,



Cary Grade  
Assistant Attorney General  
Open Records Division

ECG/lmt

Ref: ID#198135

Enc. Submitted documents

c: Mr. Alexander L. Calhoun  
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(w/o enclosures)