



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 6, 2004

Mr. Darrell G-M Noga  
Roberts & Smaby, P.C.  
1717 Main Street, Suite 3000  
Dallas, Texas 75201

OR2004-8498

Dear Mr. Noga:

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# 210439.

The City of Coppell (the "city"), which you represent, received a request for offense reports, incident reports, arrest reports, and complaints made by or against a named individual. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions 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 common law privacy. 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 named individual. Thus, this request implicates the individual's right to

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<sup>1</sup>Although the city also asserts section 552.305, we note that section 552.305 is not an exception to disclosure; instead, it permits a governmental body to decline to release information for the purpose of requesting an attorney general decision if it body believes that a person's privacy or property interests may be involved. See Gov't Code § 552.305(a); Open Records Decision No. 542 at 1-3 (1990) (discussing statutory predecessor).

privacy. Therefore, to the extent that the city maintains any information that relates to the named individual as a possible suspect, arrestee, or defendant, the city must withhold any such information under common law privacy as encompassed by section 552.101 of the Government Code. *See id.*

Next, we address your claim under section 552.108. 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 some of the submitted information pertains to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to this information.

Section 552.108 does not except 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.*, 536 S.W.2d 559 (Tex. 1976). Basic information includes the identification and description of the complainant. Open Records Decision No. 127 (1976). However, information tending to identify the sexual assault victim is private information that must be withheld. Gov't Code § 552.101 (excepts information made confidential by judicial decision and encompasses common law privacy); *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976); Open Records Decision Nos. 393 (1983), 339 (1982). We have marked the types of information that identifies the victim in the basic information, and that must not be released as basic information. The remaining basic information in these exhibits must be released to the requestor. The city may withhold the remaining information we have marked under section 552.108.<sup>2</sup> We note that you have the discretion to release all or part of the submitted information that is not otherwise confidential by law. Gov't Code § 552.007.

To conclude, (1) to the extent that the city maintains any information that relates to the named individual as a possible suspect, arrestee, or defendant, the city must withhold any such information under common law privacy as encompassed by section 552.101 of the Government Code, (2) the city may withhold the information we have marked under section 552.108(a)(2), except for basic information, which must be released under section 552.108(c), and (3) the city must withhold the sexual assault victim's identity under section 552.101 and common law privacy.

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<sup>2</sup>Because we are able to resolve this under section 552.108, we do not address your other arguments for 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).

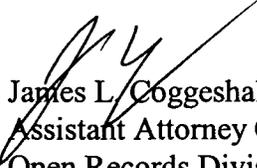
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/seg

Ref: ID# 210439

Enc. Submitted documents

c: Mr. Jeff Gardner  
P.O. Box 170313  
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(w/o enclosures)