



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2004

Mr. Loren B. Smith
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OR2004-10269

Dear Mr. Smith:

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# 213222.

The City of Friendswood (the "city"), which you represent, received twelve requests for information related to a specified address and two named individuals. You state that some responsive information has been or will be released. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted on behalf of one of the requestors. See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

You assert that some of the requested information is excepted 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." This section encompasses the doctrine of common law privacy. Common law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (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 in a manner that the same individual records in an uncompiled state do not. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989);

see also Open Records Decision No. 616 at 2-3 (1993). However, information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common law privacy and the holding in *Reporters Committee*. Cf. Gov't Code § 411.082(2)(B). In addition, a request for information about a specific incident or offense does not require the law enforcement agency to compile an individual's criminal history, and thus also does not implicate the individual's privacy as contemplated in *Reporters Committee*. Thus, when a requestor asks for unspecified information concerning a certain named individual and that individual is a possible suspect, arrestee, or defendant, a law enforcement agency must withhold this information under section 552.101 because that individual's privacy right has been implicated. *See id.*

We note in this case that some of the requestors have requested unspecified records involving the named individuals. Such requests seek a compilation of the individuals' criminal history, and any responsive information identifying these individuals as a suspect, arrestee, or defendant must be withheld from those requestors under section 552.101 in conjunction with the common law privacy concerns expressed in *Reporters Committee*.¹ However, the submitted documents reflect that one of the named individuals is now deceased. Because the privacy rights of an individual lapse upon death, we conclude that the city may not withhold any compiled criminal history information that relates to the deceased individual based upon common law privacy. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) (protection afforded by provision enacted to protect privacy of an individual extinguishes upon individual's death).

Section 552.101 also encompasses information other statutes make confidential, such as section 261.201 of the Family Code. Section 261.201(a) provides as follows:

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

¹The requestors whose requests implicate *Reporters Committee* are the following: Ms. Judy A. Zavalla, Mr. Micah Hirschfield, Ms. Charmaine Lewis, Ms. Ruth Rendon, Ms. Carolyn Canville, Ms. Twila Lindblade, and Ms. Amanda Norwig. We note that Mr. Micah Hirschfield, Ms. Charmaine Lewis, and Ms. Carolyn Canville have also requested certain specified information, and *Reporters Committee* is inapplicable to this information for these requestors.

(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.

Fam. Code § 261.201(a). Because some of the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, the information is 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, this information is 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 information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 from those requestors whose requests encompass that information.²

You claim that the information submitted in Exhibit C is confidential under Family Code section 58.007. 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.

Fam. Code § 58.007(c). Section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. The information at issue does not identify a juvenile suspect or offender. Thus, this information is not confidential under section 58.007, and it may not be withheld from disclosure under section 552.101 of the Government Code on that basis.

²Because we are able to resolve this under section 552.101, we do not address your other arguments for exception regarding this information.

You argue that some of the submitted information comprises confidential Emergency Medical Services (“EMS”) records. Access to EMS records is governed by the provisions of section 773.091 of the Health and Safety Code. Open Records Decision No. 598 (1991). Section 773.091 of the Health and Safety Code, the Emergency Medical Services Act, provides:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services. . . .

Health & Safety Code § 773.091(a), (b), (g). In this instance, however, the submitted information is not a record that was created in the course of providing emergency medical services. Therefore, we find that section 773.091 of the Health and Safety Code is inapplicable to the submitted information. Thus, no portion of the submitted information may be withheld from disclosure on this basis.

We next address your argument that the remaining submitted information is excepted from disclosure under section 552.108 of the Government Code. This section states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure “if release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be

invoked by any proper custodian of information relating to incident). Where an agency has custody of information relating to a pending case of a law enforcement agency, the agency having custody of the information may withhold the information under section 552.108 if the agency demonstrates that the information relates to the pending case and this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information. In this case, the Harris County Sheriff's Office (the "sheriff") objects to the release of the information at issue because it relates to a pending criminal case. Based upon this representation, we conclude that release of the information at issue would interfere with the detection, investigation, or prosecution of crime. See *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) (court delineates law enforcement interests that are present in active cases). Therefore, we conclude that section 552.108(a)(1) is applicable to this information.

However, section 552.108 does not except from disclosure 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*. See 531 S.W.2d at 186-87. Because the law enforcement interest at issue here belongs to the sheriff, the city must consult with the sheriff and release the types of information that are considered to be front page information to the requestors whose requests encompass that information, even if this information is not actually located on the front page. See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Pursuant to section 552.108(a)(1), the city must withhold the remaining submitted information from disclosure.³

To summarize: (1) to the extent that any of the instant requests asks for unspecified records involving the living named individual, any responsive information identifying the individual as a suspect, arrestee, or defendant must be withheld from those requestors under section 552.101 in conjunction with the common law privacy concerns expressed in *Reporters Committee*; (2) the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 from those requestors whose requests encompass that information; and (3) with the exception of basic information that must be released to those requestors whose requests encompass these reports, the remaining submitted information must be withheld on behalf of the sheriff.

³Generally, basic information held to be public in *Houston Chronicle*, 531 S.W.2d 177, is not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

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