



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 6, 2005

Mr. Louis W. Conradt, Jr.  
Assistant Criminal District Attorney  
Rockwall County  
1101 Ridge Road, Suite 105  
Rockwall, Texas 75087

OR2005-02965

Dear Mr. Conradt:

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# 221543.

The Rockwall County Criminal District Attorney's Office (the "district attorney") received a request for all records related to a named individual, including a specific report. 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 exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). When a law enforcement agency is asked to compile a particular individual's criminal history information, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See U. S. 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).

The present request, in part, asks the district attorney for all records regarding a named individual. We determine that the request implicates the individual's right to privacy. To the extent the district attorney maintains law enforcement records, other than the report specified in the request, depicting the individual at issue as a suspect, arrestee, or criminal defendant, the district attorney must withhold such information pursuant to section 552.101 in conjunction with common-law privacy pursuant to the decision in *Reporters Committee*.

The district attorney raises section 552.108(a)(2) of the Government Code in regard to report CR04-0359. This section provides in pertinent part:

(a) 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:

(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[.]

Gov't Code § 552.108(a)(2). 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), (a)(2), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that case number CR04-0359 pertains to a case that concluded in a final result other than conviction or deferred adjudication. We therefore agree that section 552.108(a)(2) is applicable to the submitted information pertaining to case number CR04-0359.

We note, however, that CR04-0359 includes documents that have been filed with the court. Information filed with a court is generally a matter of public record and may not be withheld from disclosure unless it is confidential under other law. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived by the governmental body, and as such does not constitute "other law" for purposes of section 552.022. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the court document we have marked may not be withheld under section 552.108.

We further note that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d 177. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information,

the district attorney may withhold the submitted information pertaining to case number CR04-0359 pursuant to section 552.108(a)(2).

In summary, to the extent the district attorney maintains records other than the report specified in the request, depicting the named individual at issue as a suspect, arrestee, or criminal defendant, the district attorney must withhold such information pursuant to section 552.101 in conjunction with common-law privacy. Other than basic information and the court-filed document we have marked, the submitted report CR04-0359 may be withheld 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,

A handwritten signature in black ink that reads "L. Joseph James". The signature is written in a cursive style with a large initial "L".

L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/seg

Ref: ID# 221543

Enc. Submitted documents

c: Ms. Ivelisse Soto  
c/o Rockwall County  
1101 Ridge Road, Suite 105  
Rockwall, Texas 75087  
(w/o enclosures)