



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 18, 2005

Ms. Jerris Penrod Mapes  
Assistant City Attorney  
City of Killeen  
402 North Second Street  
Killeen, Texas 76541-5298

OR2005-06348

Dear Ms. Mapes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 231462.

The Killeen Police Department (the "department") received a request for records in which a named individual is listed as a complainant or an alleged perpetrator. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note that the submitted information includes complaint affidavits. Article 15.26 of the Code of Criminal Procedure states "[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information." Crim. Proc. Code art. 15.26. Article 15.04 of the Code of Criminal Procedure provides that "[t]he affidavit made before the magistrate or district or county attorney is called a 'complaint' if it charges the commission of an offense." Crim. Proc. Code art. 15.04. Case law indicates that a complaint can support the issuance of an arrest warrant. *See Janecka v. State*, 739 S.W.2d 813, 822-23 (Tex. Crim. App. 1987); *Villegas v. State*, 791 S.W.2d 226, 235 (Tex. App.—Corpus Christi 1990, pet. ref'd); *Borsari v. State*, 919 S.W.2d 913, 918 (Tex. App.—Houston [14 Dist.] 1996, pet. ref'd) (discussing well-established principle that complaint in support of arrest warrant need not contain same particularity required of indictment). The exceptions found in the Public Information Act do not, as a general rule, apply to information that is made public by other statutes. *See* Open Records Decision No. 525 (1989) (statutory predecessor). Accordingly, the department must release the submitted complaint affidavits to the requestor without redactions pursuant to article 15.26 of the Code of Criminal Procedure.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and 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).

Because the present request, in part, asks for all police records in which a named individual is listed as an alleged perpetrator, we agree that the request implicates this person’s right to privacy. Thus, to the extent the department maintains law enforcement records depicting the individual at issue as a criminal suspect or defendant, the city must withhold such information pursuant to section 552.101 in conjunction with common-law privacy in accordance with the decision in *Reporters Committee*. However, records of traffic violations do not consist of criminal history information for purposes of common-law privacy and are therefore not excepted from disclosure under section 552.101 on that basis.

Section 552.147 of the Government Code<sup>1</sup> provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Public Information Act (the “Act”). Therefore, the department must withhold the social security numbers contained in the submitted information under section 552.147.<sup>2</sup>

Finally, section 552.130 of the Government Code excepts from disclosure information that relates to a Texas driver’s license. The department must withhold the highlighted Texas driver’s license number under section 552.130.

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

---

<sup>1</sup> Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at section 552.147 of the Government Code).

<sup>2</sup> We note that section 552.147(b) of the Government Code authorizes a governmental body to withhold a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

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 ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 231462

Enc: Submitted documents

c: Mr. Brett H. Pritchard  
Attorney at Law  
4400-3 East Central Expressway, Suite D1  
Killeen, Texas 76524  
(w/o enclosures)