



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 21, 2005

Mr. Rashaad V. Garmbrell  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2005-09576

Dear Mr. Rashaad:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 234742.

The Houston Police Department (the "department") received a request for all records pertaining to a named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, 552.136, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes a search warrant affidavit. This document is subject to article 18.01 of the Code of Criminal Procedure, which provides in part:

(b) No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every

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<sup>1</sup>You acknowledge that you did not raise section 552.136 within the ten-business-day deadline mandated by section 552.301(b) of the Government Code. *See id.* § 552.301(b). However, because the applicability of section 552.136 is a compelling reason to withhold the submitted information, we will consider your argument under this section. *See id.* § 552.302, *see also* Open Records Decision No. 150 at 2 (1977).

instance in which a search warrant is requested. The affidavit is public information if executed, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

Crim. Proc. Code art. 18.01(b). Thus, in the instance of a search warrant that was executed, the department must release the supporting search warrant affidavit under article 18.01(b). Therefore, to the extent that the search warrant affidavit that we have marked was submitted in support of a search warrant that was executed, the affidavit must be released in accordance with article 18.01(b) of the Code of Criminal Procedure.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

When a law enforcement agency is asked to compile criminal history information with regard to a particular individual, 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); Open Records Decision No. 616 at 2-3 (1993). In this instance, the request is for all records regarding a named individual. This request for unspecified information implicates the named individual's privacy interests. Therefore, to the extent that the remaining information relates to the named individual as a criminal suspect, arrestee, or defendant, any such information is private under *Reporters Committee* and must be withheld from the requestor under section 552.101 of the Government Code.

In summary, to the extent that 1) the search warrant affidavit was submitted in support of a search warrant that was executed, the search warrant affidavit must be released under article 18.01(b) of the Code of Criminal Procedure and 2) the remaining information relates to the named individual as a criminal suspect, arrestee, or defendant, any such information is private under *Reporters Committee* and must be withheld from the requestor under section 552.101 of the Government Code.

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).

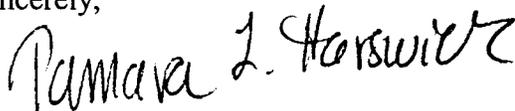
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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 Office of the Attorney General 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. 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 "Tamara L. Harswick". The signature is written in a cursive, flowing style.

Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/sdk

Ref: ID# 234742

Enc. Submitted documents

c: Ms. Kate Krepel  
Case Coordinator  
Innocence Project  
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New York, New York 10011  
(w/o enclosures)