



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 17, 2006

Chief Don Hatcher
Leander Police Department
P.O. Box 319
Leander, Texas 78646-0319

OR2006-00529

Dear Chief Hatcher:

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# 240213.

The Leander Police Department (the "department") received a request for copies of all reports at a specified address. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We also understand you to assert that portions of the submitted information are excepted from disclosure under sections 552.130 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." See Gov't Code § 552.101. This section encompasses the common law right to privacy, which protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and the public has no legitimate interest in it. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). When a law enforcement agency is asked to compile information that relates to a particular individual as a possible criminal suspect, arrestee, or defendant, the compiled information takes on a character that implicates that 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).

We understand you to assert that this request for information requires the department to compile law enforcement records of the individuals who reside at the specified address. We note, however, that this is not a request for unspecified information about any particular individual. Rather, the requestor seeks law enforcement records regarding a specific address. Such a request does not implicate the privacy interests of an individual. Therefore, no portion of the submitted information may be withheld under section 552.101 in conjunction with the holding in *Reporters Committee*.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Gov't Code § 552.101. Section 58.007(c) of the Family Code provides in pertinent part 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). We find that a portion of the submitted information involves juvenile conduct that occurred after September 1, 1997. None of the exceptions in section 58.007 apply in this instance. Therefore, the information we have marked must be withheld in under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. However, you have not demonstrated that the remaining information constitutes a law enforcement record or file concerning a child that is made confidential under section 58.007(c). We therefore conclude that you may not withhold this information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

We next address your claim that the remaining submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) exempts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime. . . if: (1) release of the information would

interfere with the detection, investigation, or prosecution of crime.” 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You raise section 552.108 stating that there is a pending investigation. However, the submitted information consists of numerous call sheets in which you have failed to identify what information pertains to the pending investigation. As you have not explained how section 552.108 is applicable to the submitted information, we therefore determine that the department may not withhold any of the remaining submitted information under section 552.108.

In summary, the department must withhold the information that we have marked from disclosure under section 552.101 of the Government Code as information made confidential by law. The remaining submitted information must be released to the requestor.¹

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).

¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/segh

Ref: ID# 2340213

Enc. Submitted documents

c: Mr. Gregory A. Strickland
103 Kerley Drive
Hutto, Texas 78734
(w/o enclosures)