



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 6, 2006

Mr. J. David Dodd, III
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2006-02165

Dear Mr. Dodd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 243564.

The Allen Police Department (the "department"), which you represent, received a request for any incident reports for five named individuals and any records related to two specified addresses since January 1, 1995. You claim that portions of the requested information are excepted from disclosure pursuant to sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and have 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. Section 552.101 encompasses information that is protected from disclosure by the common-law right to privacy. Information must be withheld under the common-law right to privacy when (1) it is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *See 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. *See United States Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor partly seeks unspecified investigative records in which specified individuals are identified. Thus, the request requires the department to compile information relating to these individuals. Based on the reasoning set out in *Reporters Committee*, we conclude that such a compilation implicates the specified individuals' rights to privacy to the extent that it includes investigations where the named individuals were suspects, arrestees, or defendants in a case. Accordingly, we conclude that

to the extent that the department maintains responsive information that reveals that any of the specified individuals were suspects, arrestees, or defendants in a case, such information must be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy in accordance with the decision in *Reporters Committee*. However, the portion of the request asking for information related to specific addresses does not implicate any individual's right to privacy and we will address your arguments for this information.

Common-law privacy also encompasses the type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, see Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, see Open Records Decision No. 545 (1990); and identities of victims of sexual abuse, see Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). After reviewing the submitted information, we have marked the information that is protected from disclosure by the common-law right to privacy and must be withheld under section 552.101.

We note that the submitted information contains Texas motor vehicle record information. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

You must withhold the Texas motor vehicle record information we have marked under section 552.130.

In summary, to the extent that the department maintains responsive information that reveals that any of the specified individuals were suspects, arrestees, or defendants in a case, such information must be withheld pursuant to section 552.101 of the Government Code in

conjunction with the common-law right to privacy in accordance with the decision in *Reporters Committee*. The information we have marked must be withheld under section 552.101 in conjunction with common-law privacy. You must withhold the Texas motor vehicle record information we have marked under section 552.130. The remaining information must be released. As this ruling is dispositive, we need not address the remaining arguments.

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,



James Forrest
Assistant Attorney General
Open Records Division

JF/er

Ref: ID# 243564

Enc. Submitted documents

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(w/o enclosures)