



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2006

Ms. Maleshia Farmer
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2006-03498

Dear Ms. Farmer:

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# 246030.

The City of Fort Worth (the "city") received a request for a specific police report involving a named individual, as well as any other police reports regarding the same individual from 1984 through 2003. You claim that the submitted 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.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *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 Comm. for Freedom of the Press*, 489 U.S. 749 (1989). However, information that refers to an individual solely as a victim, witness, or involved person is not private under *Reporters Committee* and may not be withheld under section 552.101 on that basis. In addition, when a requestor asks for information relating to a particular incident, the request does not implicate the privacy concerns expressed in *Reporters Committee* because complying with the request does not require the governmental body to compile unspecified records.

In this instance, the requestor asks in part for all information held by the city concerning a named individual. We find that this portion of the request requires the city to compile the criminal history of the individual and thus implicates the individual's right to privacy as contemplated in *Reporters Committee*. Accordingly, to the extent the city maintains records, other than the specifically requested report, that depict the named individual as a suspect, arrestee, or criminal defendant, such information must be withheld pursuant to section 552.101 and the common-law privacy concerns expressed in *Reporters Committee*. However, the requestor also asks for a specified incident report. Because the requestor specifically asks for this report, the privacy concerns expressed in *Reporters Committee* are not implicated, and thus, this report may not be withheld on that basis.

You claim the specifically requested report contains criminal history record information ("CHRI"), which is also encompassed by section 552.101 of the Government Code. CHRI is confidential and not subject to disclosure. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. See 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; see also *id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). However, the definition of CHRI does not include driving record information maintained by DPS under chapter 521 of the Transportation Code. See Gov't Code § 411.082(2)(B). We have reviewed the information at issue and find that it does not contain any CHRI generated by TCIC or NCIC. Accordingly, none of the information in the requested report may be withheld under section 552.101 of the Government Code. As you do not raise any other exceptions against disclosure, this report must be released.

In summary, to the extent the city maintains records, other than the specifically requested report, that depict the named individual as a suspect, arrestee, or criminal defendant, such information must be withheld pursuant to section 552.101 and the common-law privacy concerns expressed in *Reporters Committee*. The requested report must be released.

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*, 342 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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 246030

Enc. Submitted documents

c: Ms. Terri Cox
4744 Lowell Avenue
Fort Worth, Texas 76133-1214
(w/o enclosures)