



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 4, 1995

Mr. Peter G. Smith
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR95-1353

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 33893.

The City of Coppell (the "city") received a request for all documents in the Coppell Police Department's case file related to the shooting and assault of the requestor and his wife. You claim that, with the exception of information that would generally appear on the first page of an offense report, the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code.¹

Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth calendar day after the date of receiving the written request. On May 5, 1995, the requestor faxed his original request for "everything that is in th[e] case file" to the Coppell Police Department. On May 8, 1995, the requestor sent another telecopy to the city, in which he stated that he wanted to review his "entire file." The city responded on May 12, 1995, and informed the requestor that "the contents of pending criminal investigations are not open to public review" and that "[t]he availability of information in criminal cases is prescribed by law and is not an arbitrary decision on

¹By letter dated September 19, 1995, we notified you and the requestor that this ruling was awaiting the issuance of RQ-833. However, no action has been taken on RQ-833 and we do not anticipate action on this RQ in the near future. Therefore, we are issuing this ruling.

the part of the police department.”² The requestor submitted another letter on May 13, 1995, again stating that he wanted a copy of everything in the case file. Additionally, both the requestor and his wife submitted a request for “all documents relating to the assault of Pamela Robinson, shooting of John Robinson and the theft of [their] automobile on August 14, 1994” on May 15, 1995. The city sent the requestor a letter on May 16, 1995, informing him that the city needed clarification as to what information the requestor was seeking and set out the categories of information that were available. The requestor responded on May 17, 1995, and for the fourth time requested everything in the case file. You did not request a decision from this office until May 23, 1995, more than ten days after the requestor’s original request. Therefore, we conclude that the city failed to meet its ten-day deadline for requesting an opinion from this office.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2.

We conclude that compelling reasons exist for withholding certain documents, as those documents are made confidential by other statutes. Texas law prohibits the public disclosure of the results of polygraph examinations. V.T.C.S. art. 4413(29cc).³ This includes the test results wherever they may appear. Additionally, Texas law prohibits the disclosure of criminal history record information (“CHRI”). Section 411.083 of the Government Code provides that any CHRI maintained by the Department of Public Safety (“DPS”) is confidential. 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).

²It appears that the Coppell Police Department had also denied the requestor access to the case file in a phone conversation on May 9, 1995.

³We note that on May 15, 1995, Mrs. Pamela Robinson also made a request for all documents relating to the assault and shooting of her and her husband. Article 4413(29cc) provides that the examinee of a polygraph examination has a special right of access to the results of his or her polygraph examination. V.T.C.S. art. 4413(29cc), § 19A(c)(1). Therefore, the city must disclose Mrs. Robinson’s polygraph examination results to her. The city must withhold any other polygraph examination results.

Additionally, federal law may prohibit disclosure of social security numbers that appear in this file. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Based on the information you have provided, we are unable to determine whether the social security numbers are confidential under this federal statute. We note, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information. Finally, the file contains documents sealed by a Texas state court. The city must not release these documents to the requestor.⁴

We also conclude that compelling reasons exist for withholding documents protected by common-law or constitutional privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and 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. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently, and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or 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);

⁴We note that documents belonging to the Federal Bureau of Investigation are included within the submitted case file. You have not raised any federal statute that would make these documents confidential. However, we note that these documents indicate that they are not to be distributed to other parties. If a federal statute does make these documents confidential, we would remind you that disclosure of confidential information under the Open Records Act is a misdemeanor. Gov't Code § 552.352.

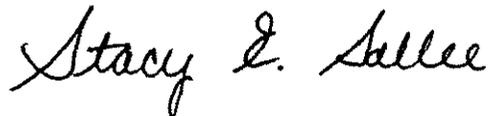
455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We conclude that the city must withhold this type of information as it relates to persons other than the requestor and his wife. We note that the requestor and his wife have a special right of access to information related to him or her that is protected from public disclosure by laws intended to protect his or her own privacy interests. Gov't Code § 552.023.

As to the remaining documents, the two bases on which you seek to withhold them are sections 552.108 and 552.111 of the Government Code. Under section 552.108, you claim that release of the requested information would compromise an on-going investigation of the city police department. Having reviewed the requested information, however, with the exceptions noted above, we conclude that no source of law makes the remainder of the requested information confidential, nor does that information implicate third party interests. The law enforcement interests normally protected by section 552.108 are not by themselves sufficient to establish a compelling reason to withhold the information. *See* Open Records Decision No. 444 (1986) at 4-5.

Similarly, you have not shown any compelling reason under section 552.111 of the Government Code why the remaining requested documents should be withheld from public disclosure. Therefore, we conclude that the city may not withhold the remaining requested documents based on section 552.111.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/KHG/rho

Ref.: ID# 33893

Enclosures: Submitted documents

cc: Mr. John Robinson
Mrs. Pamela Robinson
540 Christi
Coppell, Texas 75019
(w/o enclosures)