



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 8, 1998

Mr. Steven J. Duskie  
Police Legal Advisor  
Killeen Police Department  
402 North Second Street  
Killeen, Texas 76541-5298

OR98-1418

Dear Mr Duskie:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115488.

The Killeen Police Department (the "department") received a request for information gathered by the department concerning Case #94-2060. You state that some of the requested information does not exist.<sup>1</sup> However, you claim that the remaining information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection,

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<sup>1</sup>The Open Records Act does not require a governmental body to obtain or create new information in order to comply with a request for information. Open Records Decision No. 534 (1989). We note, however, that a governmental body must make a good faith effort to relate a request to information which it holds and should advise the requestor of the types of information available. Open Records Decision No. 561 (1990).

investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You inform this office that the requestor was charged and convicted of Aggravated Promotion of Prostitution and Compelling Prostitution. However, you state that the disclosure of the department's investigative techniques would hamper future law enforcement efforts. After reviewing your arguments and the submitted documents, we conclude that the release of the requested information would not interfere with the detection, investigation, or prosecution of crime. Therefore, the department may not withhold the requested information under section 552.108.

Next, we address your contention that the requested information is excepted from disclosure under common-law privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses the doctrine of common-law privacy. The doctrine of common-law privacy 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). After reviewing the documents at issue, we conclude that some of the information is protected by common-law privacy. We have marked the information accordingly.

You also assert that the requested information may be withheld under the informer's privilege. The informer's privilege, incorporated into the Open Records Act by section 552.101, protects the identity of one who reports a violation or possible violation of the law to officials having the duty of enforcing that law. *See Roviario v. United States*, 353 U.S. 53, 59 (1957); Open Records Decision No. 515 (1988) at 2. The privilege also protects the content of the informer's communication to the extent that it identifies the informant. *Roviario*, 353 U.S. at 60. However, once the identity of the informer is known to those who would have cause to resent the communication, the privilege is no longer applicable. *Id.* at 60. In this instance, most of the statements appear to be from witnesses rather than informants. Thus, these statements may not be withheld from disclosure. We have, however, determined that certain information may be withheld under the informer's privilege. We have marked that information accordingly.

We note that some of the requested information may be confidential by law. The submitted documents contain social security numbers which may be confidential under federal law. 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, we note that the Seventy-fifth Legislature added section 552.130 to the Open Records Act which governs the release and use of information obtained from motor vehicle records. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

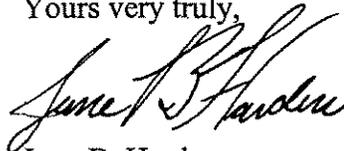
(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130. Therefore, the department must withhold Texas driver's license and identification numbers pursuant to section 552.130.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref.: ID# 115488

Enclosures: Marked documents

cc: Mr. Troy Tuggle  
133 Wolfe Road B  
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(w/o enclosures)