



May 17, 1999

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
501 Police & Courts Bldg.
Dallas, Texas 75201

OR99-1341

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 124148.

The City of Dallas Police Department (the "department") received a request for the "police and code enforcement dealings with Deep Ellum property owner Don Blanton." You assert that portions of the requested information is excepted from public disclosure by sections 552.101 and 552.108 of the Government Code. We assume that you have released the remainder of the requested information.

Section 552.301(a) of the Government Code provides in part that:

A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the request.

In this case, this office did not receive the request for a decision within the ten business day period mandated by section 552.301(a). Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302; see *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

Information that is presumed public must be released unless a governmental body demonstrates a compelling interest to withhold the information to overcome this presumption. *See Hancock*, 797 S.W.2d at 381-82 (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). The presumption of openness is overcome by a showing that the information is made confidential by another source of law or affects third party interests. Open Records Decision No. 150 (1977). Because the submitted information affects third party interests, we will address your arguments against public disclosure.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 incorporates the doctrine of common-law privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy excepts from disclosure private facts about an individual. *Id.* Therefore, 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 at 1 (1992).

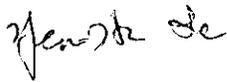
We have reviewed the submitted information and conclude that a portion of the lease agreement between two private parties is protected by privacy under section 552.101. Open Records Decision No. 545 (1990) (generally, personal financial information is private); *but cf.* Open Records Decision No. 600 at 9 (1992) (generally, legitimate public interest in facts about financial transaction between individual and governmental body). We have marked the information that you must withhold under section 552.101.

Section 552.101 also encompasses information protected by other statutes. Federal regulations prohibit the release of criminal history record information ("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). Please note, however, that driving record information is not confidential under chapter 411, *see* Gov't Code § 411.082(2)(B), and must be disclosed. Therefore, assuming that you have CHRI in your possession and it falls within the ambit of these state and federal regulations, you must withhold the CHRI

from the requestor. You must release the remainder of the submitted information without any redactions because you have not shown compelling reasons to overcome the presumption of openness for the remaining information.

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Yen-Ha Le".

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID#124148

encl.: Marked documents

cc: Mr. Brooks Egerton
Reporter
The Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)