



November 23, 1999

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

OR99-3381

Dear Mr. Hager:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 129517.

The City of Duncanville (the "city") received a request for information. Apparently, the requestor seeks information about an incident involving the late Jose Manuel Rubio as well as the personnel files of certain police officers. You claim that the information about Mr. Rubio is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. You assert that section 552.102 of the Government Code excepts the requested personnel files. This office has not received a copy of the request for information, although in your September 27, 1999 correspondence, you state that you enclosed a copy of the request with your request for an open records ruling. The Act requires a governmental body that requests an attorney general decision to comply with certain procedures, including the submission to the attorney general of a copy of the request for information. Gov't Code § 552.301(e)(1)(B). If a governmental body fails to comply with the Act's procedures for requesting a decision, the information is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. *Id.* § 552.302. The fact that requested information is deemed confidential by law is a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 150 (1978).

In this case, portions of the requested information may be confidential by law and therefore excepted from disclosure under section 552.101 of the Government Code. Although you do not say so in your correspondence to this office, we understand that the city is a civil service city. Section 143.089(g) of the Local Government Code deems confidential information contained in a police officer's personnel file maintained by a city police department. *See City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.-Austin 1993, writ denied). It appears that the records concerning the incident concerning Jose Manuel Rubio is not in the involved police officer's civil service file but rather in the department's files.

Loc. Gov't Code § 143.089(b). The submitted police officer personnel files likewise appear to be the police department's personnel files.¹ Thus, assuming that the city is a civil service city, we find that the information is confidential under section 143.089(g) and therefore must be withheld from required public disclosure pursuant to section 552.101 of the Government Code. *City of San Antonio*, 851 S.W.2d at 946.

In the event that the city is not a civil service city or the information is not maintained in the department's internal files, we will consider whether the city may withhold the information under the other exceptions to disclosure you raise. Generally, the applicability of either section 552.103² or section 552.108³ is not a compelling reason to overcome the presumption of openness. See Open Records Decision Nos. 515 (1988), 473 (1987).” Furthermore, the city has not sufficiently demonstrated the Dallas County Prosecutor's interest in withholding the information. See Open Records Decision No. 586 (1991). We therefore find that the city may not withhold the information from the requestor based on section 552.103 or 552.108.

You raise section 552.102 of the Government Code for the personnel files. Section 552.102(a) of the Government Code excepts from public disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” The test to be applied to information claimed to be protected under section 552.102 is the same test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. See *Hubert v. Harte-Hanks Tex. Newspapers*,

652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Section 552.101, which excepts from disclosure information that is confidential by law, incorporates the common-law right to privacy. Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. See *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976),

¹We assume that the Duncanville police department complied with the procedural requirement of section 143.089(g) by referring the requestor to the director of the Duncanville Civil Service at the time the request was made. We caution that, to the extent that officers' civil service files contain confidential information, the city must not release the information to the requestor. Gov't Code §§ 552.101, .117(4), .352.

²Section 552.103(a) provides that “[i]nformation is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.”

³Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure “if release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov't Code § 552.108(a)(1).

cert. denied, 430 U.S. 931 (1977). We have reviewed the submitted personnel files. We find that none of the information in the files is excepted from disclosure under section 552.102.

We consider now other provisions in the Act that may require the city to withhold portions of the information. Section 552.130 of the Government Code provides 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.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

The city must not release any driver's license numbers, license plate numbers, copies of a driver's license and VIN numbers based on section 552.130.

Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Open Records Act on the basis of that federal provision. We caution, however, that section 552.353 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

The submitted records contain private information. Section 552.101 of the Government Code excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *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 under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

The release of a compilation of offense reports in which an individual is listed as the suspect implicates that individual's common-law right to privacy. *See United States Dept' of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749 (1989), *Houston Chronicle Publishing Co.*, 531 S.W.2d at 179. Accordingly, the city must not release such a compilation. Gov't Code § 552.101; *see also Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We have marked the private information the city must not release in accordance with the *Reporters' Committee* case. In addition, we have marked other information that the city must withhold on privacy grounds. This information is protected from disclosure because it can be used to identify a victim of sexual assault. *See Open Records Decision No. 339* (1982)

Finally, we will raise section 552.117. Section 552.117 reads in pertinent part as follows:

Information is excepted from [required public disclosure] if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioner under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024.

The city must withhold from public disclosure the police officers' home address, home telephone number, or social security numbers as well as any information that reveals whether the officers have family members. We have marked the type of information covered by section 552.117.

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,



Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/jc

Ref: ID# 129517

Encl. Marked documents

cc: Mr. Domingo Garcia
Law Office of Domingo Garcia
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(w/o enclosures)