



March 1, 2000

Ms. Sara Hartin
City Attorney
Copperas Cove
P. O. Drawer 1449
Copperas Cove, Texas 76522

OR2000-0825

Dear Ms Hartin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132593.

The City of Copperas Cove (the "city") received a request for information relating to case report number 99-1295. You state that you have released the call sheet, the release of obligation and the first page of the offense report with certain information redacted from that first page. You claim that the redacted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. You also assert that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You seek to withhold the information contained in Exhibits C, D, E and F under section 552.108(a)(2) and (b)(2) of the Government Code. Section 552.108 in pertinent part, excepts from required public disclosure:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an

investigation that did not result in conviction or deferred adjudication[.]

(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. . . if:

...

(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[.]

You have submitted a copy of the release of obligation filed in case number 99-1295 and you inform us that this case has concluded in a result other than a conviction or deferred adjudication. Therefore, the city has established the applicability of section 552.108(a)(2) and (b)(2). You may withhold the information contained in Exhibits C, D, E and F under section 552.108.

We now address the information you redacted from the first page of the offense report prior to its release. You argue that, under the common law right of privacy, date of birth information and social security numbers are confidential and, therefore, should not be released. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by common law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683; *see also*, Open Records Decision Nos. 470 (concluding that fact that a person broke out in hives as a result of severe emotional distress is excepted by common-law privacy), 455 (1987) (concluding that kinds of prescription drugs a person is taking are protected by common-law privacy), 343 (1982) (concluding that information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress is protected by common-law privacy). Although there may not be a legitimate public interest in the disclosure of a person's date of birth information and social security number, they are not considered highly intimate and embarrassing such that their release would be highly objectionable to a person of ordinary sensibilities. Thus, date of birth information and

social security numbers do not meet the criteria set forth in *Industrial Foundation* and they may not be withheld under section 552.101.

Section 552.101 also encompasses information protected by other statutes. 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.* The city argues against disclosure of any social security numbers in this particular instance. You state that the city's police department uses an individual's social security number to locate or verify the identity of the person. However, you do not cite any provision of law enacted on or after October 1, 1990 upon which the city relies to make confidential the social security numbers it obtains and maintains. We, therefore, have no basis for concluding that any of the social security numbers in the records here are confidential under section 405(c)(2)(C)(viii)(I), and, therefore, excepted from public disclosure on the basis of that federal provision. However, if the social security numbers were obtained or are maintained pursuant to any provision of law enacted on or after October 1, 1990, that makes the social security numbers confidential and they must be withheld.¹

Finally, access to Texas driver's license number information is governed by section 552.130 of the Government Code. Section 552.130 provides in relevant part that:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

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

Therefore, you must withhold the Texas driver's license number information pursuant to section 552.130.

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

¹We caution that section 552.353 of the Public Information Act imposes criminal penalties for the release of confidential information.

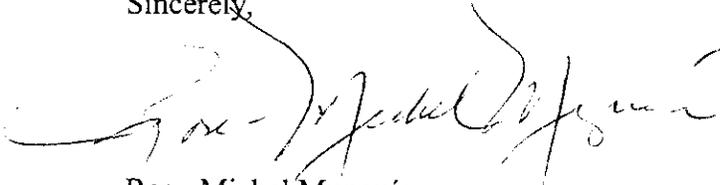
from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Rose-Michel Munguia
Assistant Attorney General
Open Records Division

RMM/jc

Ref: ID# 132593

Encl. Submitted documents

cc: Ms. Tina Stubblefield
1914 Alamo Street
Killeen, Texas 76541
(w/o enclosures)