



April 25, 2000

Mr. Paul F. Wieneskie
Cribbs & McFarland
1000 West Abram
P. O. Box 13060
Arlington, Texas 76094-0060

OR2000-1597

Dear Mr. Wieneskie:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code, the "Act." Your request was assigned ID# 134880.

The Euless Police Department (the "department") received a request for an unredacted public release portion of an arrest report. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Subsections 552.301(a), (b), and (d) of the Government Code provide:

(a) 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.

¹We note that you seek a ruling from this office on which you may rely as a previous determination as to social security numbers, driver's license number, and identifying information regarding sexual assault victims. However, the legal precision required for the issuance of a previous determination takes time, so that we must issue this ruling under our current standards. At this time, this office is considering open records questions (ORQ's) which may provide further guidance on these issues. ORQ's 42 and 43, 24 Tex. Reg. 10627, 11047 (1999), (Tex. Att'y Gen.), involve law enforcement information. Please visit our web site, www.oag.state.tx.us, to read or respond to the pending questions. You may also find the Public Information Act Handbook helpful.

(b) 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 written request.

(d) A governmental body that requests an attorney general decision under Subsection (a) must provide to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the requestor's written request:

(1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general about whether the information is within an exception to public disclosure; and

(2) a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

You do not inform us whether the original request was a written request for purposes of the Act, *see* section 552.301(c), nor, if it was a written request, did you supply this office a copy of the request as required by section 552.301(e). If we assume that the redacted report was provided in response to an oral request, and treat the subsequent written request as a request for an unredacted version of the report, this office did receive the request within ten business days as required by section 552.301(b). If we assume that the original request was a proper written request, triggering the Act's deadlines, and acknowledge that this office did not receive a request for a decision within the ten business day period mandated by section 552.301(b), the requested information would be presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). The potential confidentiality of information as to third parties may provide such a compelling reason. Because you did provide the redacted arrest report to the requestor, we need only examine those potentially confidential items which you have withheld.² Our analysis of those items would be the same whether you have timely requested this decision or not.

²Again, we note that we do not have the original request, so here assume that the original request was for the public release portion of the arrest report and not for the entire arrest report. Our assumption here is bolstered by the subsequent request for the unredacted front page, which does not mention any other missing information.

You have withheld the arrestee's address, driver's license number, and social security number. Section 552.130 of the Government Code excepts information that relates to a motor vehicle title or registration issued by an agency of this state. You must withhold the driver's license number under section 552.130. As you point out, the social security number in the reports may be confidential if it was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. 42 U.S.C. section 405(c)(2)(C)(viii); *see* Open Records Decision No. 622 (1994). If the social security number was so obtained or is so maintained, it is confidential and must be withheld.

Finally, you withheld the arrestee's address. This is not normally an item of information which would be considered confidential. 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. 930 (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 the information is of no legitimate concern to the public. *See id.* Information that either identifies or tends to identify a victim of sexual assault is protected from public disclosure based on the common law right to privacy. *See* Open Records Decision Nos. 393 (1983), 339 (1982). We conclude that the department must not release to the public any information that furnishes a basis for identification of the victim, including in this case the address of the arrestee. In summary, the department must withhold the address and driver's license number of the arrestee and may be required to withhold the social security number as discussed above.

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 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,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/ljp

Ref: ID# 134880

Encl. Submitted documents

cc: Ms. Mary Bailey
210 Linwood
Noeosho, Missouri 64850
(w/o enclosures)