



February 22, 2001

Ms. Kristi LaRoe
Assistant District Attorney
Tarrant County
401 W. Belknap
Fort Worth, Texas 76196-0201

OR2001-0653

Dear Ms. LaRoe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144432.

The Tarrant County Sheriff's Department (the "county") received a request for information associated with a specified investigation. You have submitted responsive information to this office for review. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code.

Subsections 552.301(a) and (b) 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.

(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.

The documents submitted to this office indicate that the county received the request for information on November 20, 2000. This office received your request for decision on December 15, 2000. The postmarked date on the envelope bearing this request is December 12, 2000. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301 of the Government Code. Because the request for a decision was not timely received, the requested information is 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 a compelling reason 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). A compelling reason is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Record Decision No. 150 (1977). Section 552.108 does not protect information made confidential by law. As you raise section 552.108 here to protect only the interests of the county, and not those of a third party, the application of this exception does not demonstrate a compelling reason for withholding information presumed to be public in this case. We find, however, that the submitted materials include information which on their face may provide a compelling reason for withholding the information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Judicial decisions hold that information is protected by common law privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court considered the following types of information to be protected by rights of privacy: information 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 (1970) (concluding that fact that 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), 422 (1984) (concluding that details of self-inflicted injuries are presumed 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). We note that the submitted information references a suicide attempt made by an incarcerated individual while in custody, and a report of a previous suicide attempt by that individual made to jail personnel. While information about suicide attempts and self inflicted injuries is generally protected by the common law right of privacy, we find that in this situation the public has a legitimate interest in this information since it reflects on the administration of the jail. This information does not meet both prongs of the *Industrial Foundation* test for common law protection. Therefore, the information may not be withheld under section 552.101. However, we have marked other information which we consider to be protected by the common law right of privacy. The marked information must be withheld under section 552.101 in conjunction with the common law right of privacy.

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.* We 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. 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 pursuant to any provision of law, enacted on or after October 1, 1990.

The submitted documents include information that must be withheld under section 552.130 of the Government Code. This section governs the release and use of information obtained from motor vehicle records, and 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; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Texas driver's license numbers, Texas license plate numbers, and vehicle identification numbers must be withheld pursuant to section 552.130. The submitted materials include Texas drivers' license numbers and a photocopy of a Texas drivers' license. This information must be withheld under section 552.130 of the Government Code.

In conclusion, the information which we have marked as protected by the common law right of privacy, as well as the submitted Texas driver's license photocopy, and Texas drivers' license numbers must be withheld. The submitted social security numbers must be withheld if you determine that this social security number information was obtained or maintained pursuant to any provision of law enacted on or after October 1, 1990. The remaining responsive information must be released.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 144432

Encl: Submitted documents

cc: Ms. Janet B. Fischel
Law Offices of Ken Williford
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Fort Worth, Texas 76102
(w/o enclosures)