



April 24, 2001

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75049-9002

OR2001-1636

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146387.

The Garland Police Department (the "department") received a request for all reports regarding a named suspect and three specified victims. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted 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). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See Open Records Decision Nos. 616 (1993), 565 (1990)*. Therefore, where a request seeks a compilation of an individual's law enforcement records, those records which indicate that the individual was arrested or was a suspect are protected by the common law right of privacy.

You argue that the request might be construed as a request for an individual's criminal history. We conclude, however, that the request does not seek a compilation of an individual's criminal history. Rather, the request seeks reports regarding a named suspect wherein one of the specified individuals is identified as the victim. Such a request does not implicate the individual's common law right of privacy. Therefore, the department may not withhold the submitted information under section 552.101 of the Government Code in conjunction with the common law right of privacy.

We note that the arrest report you have submitted does not appear to be responsive to this request as it does not list any of the specified victims as a complainant or victim. The department need only release information responsive to the requestor's request. Thus, you may withhold any information not responsive to the request for information at issue here.

We note that one of the submitted documents contains a Texas driver's license number. Section 552.130 of the Government Code provides in relevant part:

(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[.]

Thus, you must withhold the Texas driver's license number contained in the submitted information, which we have marked, under section 552.130 of the Government Code.

Finally, we note that a social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994).* It is not apparent to us that the social security number contained in the records at issue was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue was obtained or is maintained pursuant to such a statute and is therefore confidential under section 405(c)(2)(C)(vii)(I). We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security number contained in the submitted information, the department should ensure that the number was not obtained or maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

To summarize, we conclude that (1) the department may not withhold the submitted information under section 552.101 of the Government Code in conjunction with the common law right of privacy; (2) the department may withhold any information not responsive to the request for information at issue here; (3) the department must withhold the Texas driver's license number contained in the submitted information, which we have marked, under section 552.130; (4) prior to releasing the social security number contained in the submitted information, the department should ensure that the number was not obtained or maintained by the department pursuant to any provision of law enacted on or after October 1, 1990; and (5) the department must release the remaining submitted information.

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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/rr

Ref: ID# 146387

Encl. Marked documents

cc: Mr. Steve Rust
2050 Forest Lane #280
Garland, Texas 75042
(w/o enclosures)