



May 9, 2001

Ms. Ann-Marie P. Sheely
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2001-1895

Dear Ms. Sheely:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146968.

The Travis County Attorney's Office (the "county attorney") received a written request for certain records pertaining to "insufficient checks" written by a named individual, including checks written in 1992, 1996, and 1998. You contend that the requested information is exempted from public disclosure pursuant to sections 552.101 and 552.130 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You first contend that by her request, the requestor is asking the county attorney to compile a criminal history of the named individual. 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). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See Open Records Decision Nos. 616 (1993), 565 (1990).*

In this instance, however, the current request is far more narrow than that discussed in *Reporters Committee*. To the extent that the requestor has requested records that pertain to a specific offense that allegedly occurred in a specific year, we do not believe the request requires a "compilation" by the county attorney of criminal history information as

contemplated in *Reporters Committee*. On the other hand, we agree that any criminal history information pertaining to offenses not specified by the requestor that occurred in any year other than those specified in the request would require the county attorney to compile criminal history information on the named individual, and that any such records must accordingly be withheld pursuant to section 552.101 of the Government Code in conjunction with the individual's right to privacy.

We now address your other arguments for withhold portions of the records at issue pertaining to insufficient checks written in the years 1992, 1996, and 1998. You contend that the named individual's bank account number is protected by common law privacy as incorporated into section 552.101 of the Government Code. Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We agree that an individual's bank account number constitutes information that is both highly intimate and of no legitimate public interest. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983) (certain personal financial information protected by common law privacy). Accordingly, the county attorney must withhold the bank account numbers pursuant to section 552.101 of the Government Code.

Finally, you seek to withhold from some of the documents at issue the named individual's driver's license number. Section 552.130(a)(1) of the Government Code requires the withholding of "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Accordingly, the county attorney must withhold the individual's driver's license number pursuant to section 552.130(a)(1) of the Government Code.

In summary, the county attorney must withhold any information pertaining to the named individual's criminal history except for that information relating to hot checks that were written in 1992, 1996, and 1998. The county attorney must release all information pertaining to "insufficient check writing" in the years 1992, 1996, and 1998 except for the individual's driver's license number and bank account number.

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).

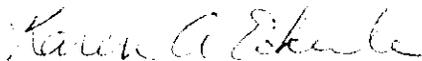
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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/RWP/seg

Ref: ID# 146968

Encl. Submitted documents

cc: Ms. Reni Johnson
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(w/o enclosures)