



September 17, 2001

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2001-4135

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152030.

The City of El Paso Police Department (the "department") received a request for all reports and related documents regarding complaints filed by a named individual against the El Paso Community College. You state that the department will release most of the responsive information to the requestor, including those documents that this office ordered released in Open Records Letter No. 2001-0025 (2001). You have also informed this office that the requestor has withdrawn his request for certain vendor lists, a representative sample of which you have submitted as Exhibit H. You claim that the rest of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

First, you contend that the information in Exhibit E is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime."

¹You indicate that the information in Exhibits E, F, and I consists of representative samples of the information you seek to withhold. We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Gov't Code § 552.108(a)(1). You inform us that the information in Exhibit E pertains to a pending criminal investigation. Based on your representation, and having reviewed the information at issue, we conclude that you may withhold the information in Exhibit E from disclosure under section 552.108(a)(1) of the Government Code.² See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978).

Second, you argue that, although you have no objection to the release of the information in Exhibit F, you are not required to furnish the requestor with copies of such information. The information in Exhibit F is copyrighted. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. See Open Records Decision No. 550 (1990).

Third, you contend that Exhibit G contains criminal history record information that must be withheld under section 552.101 of the Government Code. Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Included within this exception is information considered confidential under the common law right to privacy. When a law enforcement agency compiles criminal history information pertaining to a particular individual, the compiled information takes on a character that implicates the individual's right of privacy in a manner that the same information in an uncompiled state does not. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); see also Open Records Decision No. 616 at 2-3 (1993). We have marked the criminal history information in Exhibit G that the department must withhold under section 552.101 and *Reporters Committee*.

You also contend that highlighted driver's license numbers in Exhibits G and L must be withheld under section 552.130 of the Government Code. Section 552.130 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[.]

²As section 552.108 is dispositive of the information in Exhibit E, we need not address your other claimed exception.

We agree that the department must withhold the highlighted driver's license numbers in Exhibits G and L under section 552.130 of the Government Code. We have marked additional driver's license numbers in Exhibit G that the department must withhold under section 552.130.

We note that Exhibit G contains social security numbers that may be withheld in some circumstances under section 552.101. 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 the social security numbers in Exhibit G are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information 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 by the department pursuant to any provision of law enacted on or after October 1, 1990. The remaining information in Exhibits G and L must be released.

Fourth, you assert that a peace officer's address and social security number in Exhibit I is exempt from disclosure under 552.117. Section 552.117(2) of the Government Code excepts from disclosure "information that relates to the home address, home telephone number, or social security number" of a peace officer, or that reveals whether the peace officer has family members. Therefore, the department must withhold the information you have highlighted in Exhibit I under section 552.117(2) of the Government Code. *See also* Open Records Decision No. 670 (2001) (providing that a governmental body may withhold information under section 552.117(2) without requesting a decision from this office). We have marked additional information that must also be withheld under section 552.117(2). The remaining information in Exhibit I must be released.

Fifth, you argue that a notation in Exhibit J is confidential under section 261.201 of the Family Code. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because the highlighted information in Exhibit J relates to an allegation of abuse or neglect of a child, such information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the highlighted information in Exhibit J is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold the highlighted information in Exhibit J from disclosure under section 552.101 of the Government Code as information made confidential by law. The remaining information in Exhibit J must be released.

Finally, you contend that the highlighted information in Exhibits K and M is excepted from disclosure under section 552.101 and common law privacy. Section 552.101 encompasses information that is confidential under the common law right to privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication 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 type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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 (1978) (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 have marked the information in Exhibits K and M that the department must withhold under section 552.101 and common law privacy. The remaining information in Exhibits K and M must be released.

To summarize, we conclude that: (1) the department may withhold the information in Exhibit E under section 552.108; (2) while the department must allow inspection of the information in Exhibit F, the department need not furnish copies of such information to the requestor; (3) the department must withhold the information we have marked in Exhibit G under section 552.101 and *Reporters Committee*; (4) the department must withhold the

driver's license numbers in Exhibits G and L under section 552.130; (5) prior to releasing any social security number information from Exhibit G, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990; (6) the department must withhold the peace officer's social security number and home address in Exhibit I under section 552.117(2); (7) the department must withhold the highlighted information in Exhibit J under section 552.101 in conjunction with section 261.201 of the Family Code; and (8) the department must withhold the information we have marked in Exhibits K and M under section 552.101 and common law privacy. The remaining 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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 152030

Enc: Marked documents

c: Mr. Agustin Hernandez
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(w/o enclosures)