



November 6, 2001

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

OR2001-5136

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# 154374.

The City of El Paso Police Department (the "department") received a request for information relating to two officers of the department. You claim that portions of the information submitted as Exhibits B, C, and D are excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that another statute makes confidential. You claim that Exhibit B-3 contains information that is confidential under section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You represent to this office that section 772.318 is applicable to the El Paso County Communications District. You inform us that the highlighted address and telephone number information in Exhibit B-3 was supplied to the

El Paso County 9-1-1 system by Southwestern Bell. Based on your representations, we conclude that the addresses and telephone numbers of 9-1-1 callers in Exhibit B-3 must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

You also raise section 552.101 in conjunction with common law privacy. Information must be withheld from the public under section 552.101 in conjunction with the common law right to privacy when the information (1) is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency compiles criminal history information concerning a particular individual, the compiled information takes on a character that implicates that 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). Therefore, to the extent that the department has compiled law enforcement records relating to an individual that list the individual as a suspect, such records are excepted from public disclosure in their entirety under section 552.101 of the Government Code in conjunction with *Reporters Committee*.

Common law privacy under section 552.101 also protects the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (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). This office has since determined that other types of information are protected by common law privacy under section 552.101. See generally Open Records Decision No. 659 at 4-5 (1999); see also Open Records Decision Nos. 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress).

You claim that portions of Exhibits B and C are protected by common law privacy. We find, however, that the public has a legitimate interest in some of the information in question. Information that is a matter of legitimate public interest may not be withheld on privacy grounds under section 552.101. See Gov't Code § 552.102(a); *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.--Austin 1983, writ ref'd n.r.e.); Open Records Decision Nos. 444 at 6 (1986) (public has genuine interest in information concerning law enforcement employee's qualifications and performance), 423 at 2 (1984) (information may not be withheld on privacy grounds if it is of sufficient legitimate public interest, even if person of ordinary sensibilities would object to release on grounds that information is highly intimate or embarrassing). We have marked the private information that the city must withhold under section 552.101.

You also assert that this request for information presents special circumstances that require the city to withhold other information under section 552.101. In Open Records Decision No. 169 (1977), this office concluded that in certain "special circumstances," information that ordinarily would be public may be withheld under section 552.101. *Id.* at 6-7. We consider such "special circumstances" to refer to a very narrow set of situations. *Id.* at 6. "Special circumstances" under section 552.101 do not include "a generalized and speculative fear of harassment or retribution." *Id.* However, such "special circumstances" do include situations in which release of the information would likely cause someone to face "an imminent threat of physical danger." *Id.* You assert that special circumstances necessitate the withholding of a witness's address, telephone number, social security number, and employer information, along with other information relating to another witness. We find that you have demonstrated that special circumstances require the city to withhold some of this information. We conclude that the city must withhold the first witness's address, telephone number, social security number, and employer information under section 552.101.

You also raise section 552.117 of the Government Code. Section 552.117(2) excepts from disclosure the home address, home telephone number, or social security number of a peace officer, and information that reveals whether a peace officer has family members, regardless of whether the peace officer has complied with section 552.024 of the Government Code. *See Gov't Code § 552.117(2)*. This information may not be withheld under section 552.117(2) from the peace officer to whom it pertains. *See Gov't Code § 552.023*.¹ In this instance, the requestor is a peace officer to whom some of the responsive section 552.117 information pertains. Therefore, the department may not withhold the requestor's home address, home telephone number, social security number, or family member information from the requestor under section 552.117(2). The department must withhold these types of information under section 552.117(2), however, if they relate exclusively to a peace officer other than the requestor.

Lastly, you raise section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(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]

¹Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"; *see also* Open Records Decision No. 481 at 4 (1987) (stating that privacy theories are not implicated when an individual asks a governmental body to provide him with information concerning himself).

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1)-(2). The department must withhold motor vehicle record information, including Texas driver's license and license plate numbers, in accordance with section 552.130.

In summary, the department must withhold the addresses and telephone numbers of 9-1-1 callers under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. Other portions of the requested information must be withheld under section 552.101 in conjunction with common law privacy. The department also must withhold under section 552.117(2) information that relates exclusively to a peace officer other than the requestor. Texas driver's license and license plate numbers must be withheld in accordance with section 552.130. 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).

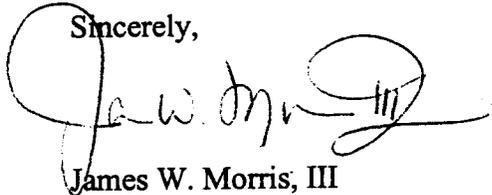
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a stylized "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 154374

Enc: Marked documents

c: Officer Enrique Davila, Jr.
c/o Traffic Division
El Paso Police Department
911 N. Raynor
El Paso, Texas 79903
(w/o enclosures)