



January 23, 2002

Mr. Joe Jackson
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2002-0337

Dear Mr. Jackson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157661.

The City of College Station (the "city") received a request for information regarding a named police officer. You state that you have released some of the requested information to the requestor. You claim, however, that the remaining requested 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.

In Open Records Letter Nos. 2001-5574 (2001), 2001-5847 (2001), and 2002-0053 (2002), respectively, we concluded that the city could withhold from disclosure Texas license plate numbers, driver's license numbers and vehicle identification numbers based on section 552.130 of the Government Code without the necessity of requesting a decision from our office with respect to these types of information. Because the facts, law, and circumstances surrounding these rulings do not appear to have changed, we find that you may rely on these rulings to withhold from disclosure based on section 552.130 the Texas license plate numbers, driver's license numbers, and vehicle identification numbers contained within the submitted information. *See* Gov't Code § 552.301(a); *see also* Open Records Decision No. 673 (2001).

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; [or]

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

You must withhold the state, year of license issuance, and the date of license expiration under section 552.130. We note, however, that section 552.130 applies to licenses or permits issued by an agency of this state. Therefore, motor vehicle records issued by another state are not excepted under section 552.130 and may not be withheld.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure 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. 540 S.W.2d at 685. 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). Portions of the information consist of individuals' criminal history compiled by a governmental body. We conclude that you must withhold this information under common law privacy as encompassed by section 552.101 of the Government Code. See *id.* We have marked portions of the submitted information which must be withheld pursuant to section 552.101 in conjunction with the common law right to privacy.

Section 552.101 also encompasses confidentiality provisions such as Family Code section 58.106. The Texas Department of Public Safety is responsible for recording data and maintaining a database for the juvenile justice information system. Fam. Code § 58.102(a). The information contained in this system is confidential, and may be released only in certain limited circumstances. Open Records Decision No. 655 (1997). Section 58.106 of the Family Code provides in relevant part that:

(a) Except as provided by Subsection (b), information contained in the juvenile justice information system is confidential information for the use of the department and may not be disseminated by the department except

- (1) with the permission of the juvenile offender, to military personnel of this state or the United States;

- (2) to a person or entity to which the department may grant access to adult criminal history records as provided by Section 411.083, Government Code;

(3) to a juvenile justice agency; and

(4) to the Criminal Justice Policy Council, the Texas Youth Commission, and the Texas Juvenile Probation Commission for analytical purposes.

(b) Subsection (a) does not apply to a document maintained by a juvenile justice agency that is the source of information collected by the department.

It does not appear that any of the exceptions to confidentiality apply. Therefore Exhibits 187-188 are confidential pursuant to section 58.106 of the Family Code. You must withhold the information in Exhibits 187-188 from disclosure under section 552.101 of the Government Code.

A social security number may be confidential 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), if a governmental body obtained or maintains the social security number pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). You assert that City Ordinance No. 2436, adopted February 24, 2000, constitutes a provision of law enacted on or after October 1, 1990, for purposes of the federal statute.¹ We have considered your arguments and reviewed the documentation you submitted as Exhibits E and F. We find, however, that Ordinance No. 2436 is not specifically applicable to social security numbers. Furthermore, a city ordinance cannot operate to make information confidential that is subject to chapter 552 of the Government Code. *See* Open Records Decision No. 594 at 3 (1991) (citing *City of Brookside Village v. Comeau*, 633 S.W.2d 790 (Tex. 1982), *cert. denied*, 459 U.S. 1087 (1982)); *see also Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (absent specific legislative authority, governmental body may not bring information within section 552.101 by promulgating rule designating information as confidential). Accordingly, Ordinance No. 2436 does not constitute a provision of law enacted on or after October 1, 1990, for purposes of section 405(c)(2)(C)(viii)(I) of the Social Security Act. You have cited no other law, nor are we aware of any other law, that authorizes the department to obtain or maintain a social security number. It therefore is not apparent to this office that the city obtained or maintains the social security numbers at issue here pursuant to any provision of law enacted on or after October 1, 1990. Thus, we have no basis for concluding that the social security numbers were obtained or are maintained pursuant to such a law and are therefore confidential under section 405(c)(2)(C)(viii)(I) of the federal law. We caution the city, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to

¹You explain that Ordinance No. 2436 relates to the retention and disposition of city records. You contend that “[c]onsequently, the City currently ‘maintains’ and/or retains all City records pursuant to a provision of law enacted on or after October 1, 1990.”

releasing the social security numbers, the city should ensure that they were not obtained and are not maintained pursuant to any provision of law enacted on or after October 1, 1990.

You assert that Exhibits 153, 154, and 335 are records which are confidential under the Medical Practice Act (the "MPA"). Section 159.002 of the MPA provides:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

The medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We find Exhibits 153, 154 and 335 are medical records subject to the MPA and may only be released in accordance therewith.

You claim that Exhibits 267 and 268 are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, we understand you to assert that Exhibits 267 and 268 pertain to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing 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). You indicate that you have released to the requestor the basic information contained in Exhibit 266.

You claim that a portion of Exhibit 435 is excepted from disclosure based on section 552.117 of the Government Code. Section 552.117(2) 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 city must withhold the information which you have marked in Exhibit 435.

To summarize, we conclude that: (1) the city must withhold Texas license plate, driver's license, vehicle identification numbers, year of issuance, and date of expiration for Texas licenses under section 552.130; (2) the city must withhold the marked portions of the information in Exhibits 209-221, 249, 288-291, and 298-301 under section 552.101 in conjunction with the common law right to privacy; (3) the city must withhold Exhibits 187-188 under section 552.101 in conjunction with section 58.106 of the Family Code; (4) the city must withhold social security numbers in Exhibits 137, 174, and 326 if they were obtained or are maintained pursuant to any provision of law enacted on or after October 1, 1990; (5) the city may release Exhibits 153, 154 and 335 in accordance with the MPA; (6) the city may withhold Exhibits 267 and 268 based on section 552.108; and (7) the city must withhold the information marked in Exhibit 435 based on section 552.117(2).

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).

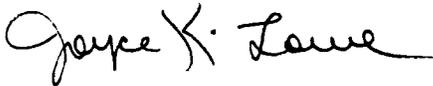
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/sdk

Ref: ID# 157661

Enc: Submitted documents

c: Mr. Jim James
P.O. Box 1146
Bryan, Texas 77806
(w/o enclosures)