



January 30, 2002

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

OR2002-0449

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# 157950.

The City of College Station Police Department (the "department") received a request for all information regarding a named individual. You inform us that some of the requested information will be released to the requestor, but you claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 Foundation v. Texas Industrial Accident Board*, 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). In this instance, the

requestor asks for all information concerning a certain person, and as a result, the individual's right to privacy has been implicated. Thus, to the extent that any responsive information lists the named individual as a suspect, arrestee or defendant, we conclude that you must withhold this information under common-law privacy as encompassed by section 552.101 of the Government Code. *See id.*

Section 552.101 also encompasses information protected by statute. In that regard, you assert that Exhibit 18 is a medical record, access to which is governed by the Medical Practice Act (the "MPA"). The MPA provides in relevant part:

(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.

Occ. Code § 159.002(b). 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). Here, Exhibit 18 may be released only in accordance with the MPA.

You also seek to withhold accident report forms, submitted as Exhibits 32, 33, 50-58, 60, and 61, that appear to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). You claim that the accident reports contained in the file are confidential pursuant to section 550.065(b) of the Transportation Code. Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has not provided the department with two of the three pieces of information. Thus, you must withhold the accident reports submitted as

Exhibits 32, 33, 50-58, 60, and 61 under section 552.101 in conjunction with section 550.065(b).

You also seek to withhold driver's license information under section 552.130. In Open Records Letter No. 2001-5847 (2001) we concluded that the City of College Station could withhold from disclosure Texas driver's license 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 the prior ruling do not appear to have changed, we find that you may rely on the prior ruling to withhold from disclosure, based on section 552.130, the Texas driver's license numbers contained in the submitted information. See Gov't Code § 552.301(a); see also Open Records Decision No. 673 (2001).

In sum, to the extent that any responsive information lists the named individual as a suspect, arrestee or defendant, you must withhold this information under common-law privacy as encompassed by section 552.101 of the Government Code. Also, Exhibit 18 may only be released in accordance with the MPA. In addition, you must withhold the accident reports submitted as Exhibits 32, 33, 50-58, 60, and 61 under section 552.101 in conjunction with section 550.065(b) of the Transportation Code, and you must withhold the Texas driver's license numbers in the submitted information under section 552.130. The remaining information must be released to the requestor.

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

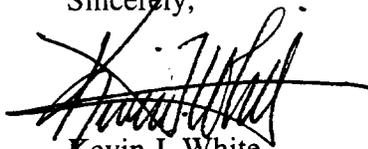
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may 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,



Kevin J. White  
Assistant Attorney General  
Open Records Division

KJW/seg

Ref: ID# 157950

Enc. Marked documents

c: Ms. Lynn A. Grisham  
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(w/o enclosures)