



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 4, 2002

Mr. Robert R. Ray
Assistant City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606-1952

OR2002-6908

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173042.

The City of Longview (the "city") received a request for the police report regarding a named individual's arrest for assault on July 9, 2001, the application for employment with the Longview Police Department submitted by another named individual, any complaints filed with the police regarding this individual from January 1, 2001 through the present, and any police reports pertaining to suspicious persons at Longview Regional Medical Center. You have not submitted any information responsive to the request for police reports pertaining to suspicious persons at Longview Regional Medical Center, nor have you raised any exceptions to its disclosure. Therefore, we assume that, to the extent this information exists, it has been released to the requestor. If not, you must release it immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances). You claim that the remainder of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code 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. When a law enforcement agency is asked to compile a particular individual's criminal history information, the compiled information takes on a character that implicates the individual's right to 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 find that the request for any complaints filed with the police regarding this individual from January 1, 2001 through the present implicates this individual's right to privacy. Therefore, to the extent the city maintains any police department records responsive to this part of the request that identify the named individual as a suspect, arrestee, or defendant, the city must withhold all such records in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy. We note that case numbers 02-012884 and 02-012382 do not identify this individual as a criminal suspect, arrestee, or defendant. Therefore, these reports do not implicate this individual's right to privacy. Consequently, such information may not be withheld pursuant to section 552.101 and common-law privacy.

You also argue that the police report pertaining to a named individual's arrest for assault on a particular occasion is excepted from disclosure under section 552.101 and common-law privacy. In addition to the information described above, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, see Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), information concerning the intimate relations between individuals and their family members, see Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, see Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Upon review, we have marked the information in the requested police report that must be withheld pursuant to common-law privacy.

Next, you state that the requested employment application records contain some personal financial information that is protected by common-law privacy. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find that portions of the employment application records at issue, which we have marked, contain some personal financial information that is not of legitimate public interest. Accordingly, the city must withhold the information we have marked under section 552.101

and common-law privacy. However, we determine that the remainder of the information you seek to withhold as personal financial information is not excepted under common-law privacy. *Cf.* Open Records Decision No. 444 (1986) (qualifications of governmental employees, particularly in law enforcement, are subject to a legitimate public interest); *see also* Open Records Decision No. 562 at 9, n.2 (1990) (credibility and effectiveness of the police force is matter of legitimate public interest).

Criminal history record information ("CHRI") obtained from the National Crime Information Center ("NCIC") or the Texas Crime Information Center ("TCIC") is confidential under federal law and subchapter F of chapter 411 of the Government Code. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. §20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.") and (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 of the Government Code provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. *See* Gov't Code §411.083(a); *see also id.* §§ 411.106(b), .082(2) (defining criminal history record information). Similarly, CHRI obtained from the DPS pursuant to statute also is confidential and may be disclosed only in very limited instances. *See id.* §411.084; *see also id.* §411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Thus, to the extent that the employment application records at issue contain any criminal history record information obtained from the TCIC or NCIC networks, that information must be withheld under section 552.101 in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

You have also marked certain information in the requested employment application that you claim is excepted from disclosure as criminal history information under section 552.101 and common-law privacy. Upon review, we determine that the information you have marked under common-law privacy in the application is not criminal history information compiled by a law enforcement agency. *See Reporters Committee*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 (1993). Thus, we determine the district cannot withhold this information under section 552.101 and common-law privacy.

You seek to withhold the city's copy of the individual's birth certificate under section 552.115 of the Government Code. Section 552.115 provides that a birth record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from required public disclosure. Because section 552.115 only applies to a birth certificate maintained by the bureau of vital statistics or local registration officials, the city may not withhold the birth certificate contained in the employment application records pursuant to that provision. *See* Open Records Decision No. 338 (1982).

The employment application records also contain a private e-mail address, which you have marked. Section 552.137 of the Government Code provides that “[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Public Information Act].” Therefore, unless individual at issue affirmatively consented to the release of his e-mail address, the city must withhold the e-mail address you have marked under section 552.137 of the Government Code.

The submitted records contain Texas driver’s license numbers and vehicle identification numbers. Section 552.130 of the Government Code excepts from public disclosure information relating to driver’s licenses and motor vehicle registration issued by an agency of this state. Therefore, you must withhold the driver’s license numbers and vehicle identification numbers you have marked under section 552.130.

We also note that social security numbers may be confidential under federal law. A social security number may be withheld in some circumstances 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 number and related records that are obtained or 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 are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the 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.

In summary, to the extent the city maintains records that depict the individual at issue as a suspect, arrestee, or defendant, such records must be withheld under section 552.101 and *Reporters Committee*. We have marked information in the report pertaining to the arrest specifically mentioned in the request that the city must withhold under section 552.101 and common-law privacy. We have also marked personal financial information in the requested employment application that the city must withhold under section 552.101 and common-law privacy. Criminal history record information obtained from the TCIC or NCIC networks is confidential under section 552.101 and chapter 411 of the Government Code. An e-mail address must be withheld under section 552.137. Texas motor vehicle information must be withheld under section 552.130. Social security numbers may be confidential under section 552.101 and federal law. The remainder of the submitted 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. 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 'D. Saldivar', with a long horizontal flourish extending to the right.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 173042

Enc: Submitted documents

c: Mr. John Lynch
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Longview, Texas 75601
(w/o enclosures)