



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 13, 2002

Mr. Todd A. Blomerth
Lockhart City Attorney
Blomerth and Payne
103 South Main Street
Lockhart, Texas 78644

OR2002-7149

Dear Mr. Blomerth:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173692.

The Lockhart Police Department (the "department"), which you represent, received a request for telephone, CAD, and other information relating to three named individuals or the Lockhart Independent School District from September 2 to September 9, 2002. You claim that some of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

We first note that the requestor seeks "any phone and/or 911 records as well as public records" relating to the three named individuals for a specified time period. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ This exception encompasses the common-law right to privacy. Common-law privacy protects information that is (1) 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 is asked to compile criminal history information with regard to a particular individual, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same

¹Unlike other exceptions to disclosure under chapter 552 of the Government Code, this office will raise section 552.101 on behalf of a governmental body. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 325 at 1 (1982).

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).

This request, in part, is for unspecified law enforcement records that involve any of the three named individuals. In that respect, this request for information implicates these individuals' rights to privacy. Therefore, any information maintained by the department that depicts any of the three named individuals as a suspect, arrested person, or defendant is protected by privacy under *Reporters Committee*. Any such information must be withheld from the public under section 552.101 of the Government Code.

We note that the requestor may be the authorized representative of the individual who is named as the suspect in report number 200209021. If so, then the requestor has a special right of access to information that is protected from public disclosure on the basis of the suspect's right to privacy. *See* Gov't Code § 552.023.² Thus, in the event that the requestor is the suspect's authorized representative, report number 200209021 may not be withheld from the requestor under section 552.101 and *Reporters Committee*.

However, the requestor would not have a right of access to all of the information in report number 200209021. Section 552.130 of the Government Code excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state." Gov't Code § 552.130(a)(1). Texas driver's license numbers must be withheld from the public under section 552.130. In the event that the requestor has a right of access to report number 200209021, we have marked Texas driver's license numbers that must be withheld from him under section 552.130. We note that the requestor would also have a right of access to the suspect's Texas driver's license number under section 552.023 if he is the suspect's authorized representative.

Lastly, we note that report number 200209021 also contains social security numbers. A social security number may be excepted from public disclosure under section 552.101 in conjunction with 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). It is not apparent to this office that any social security number contained in report number 200209021 is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes the department to obtain or maintain a social security number. Thus, we have no basis for concluding that any social security number contained in the report was obtained or is maintained pursuant to such a law

²Section 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."

and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing a social security number, the department should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

In summary, any information held by the department that depicts any of the named individuals as a suspect, arrested person, or defendant is private under *Reporters Committee* and must be withheld from the public under section 552.101 of the Government Code. If the requestor is the authorized representative of the suspect in report number 200209021, then he has a right of access to that report under section 552.023. In that event, however, the marked Texas driver's license numbers in report number 200209021 must be withheld from the requestor under section 552.130. Report number 200209021 also contains social security numbers that may be excepted from public disclosure under section 552.101 in conjunction with 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. As we are able to make these determinations, we need not address section 552.108.

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).

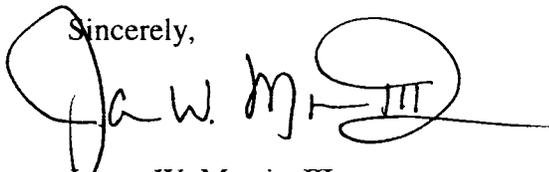
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 "J.W. Morris III". The signature is stylized with a large loop at the beginning and a horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 173692

Enc: Marked documents

c: Mr. Samuel D. Williams
2400 Silvercloud Drive
Lockhart, Texas 78644
(w/o enclosures)