

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 9, 2003

Mr. Leonard V. Schneider
Ross, Banks, May, Cron, & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2003-2391

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179085.

The City of League City (the "city"), which you represent, received a request for "incident reports and/on [two specified individuals] 525 Lakeside Dr. League City." You state that you have made some responsive information available to the requestor. You claim, however, that the remaining requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information. We have also considered comments submitted by a representative of the requestor. *See Gov't Code* § 552.304 (providing that person may submit comments stating why information should or should not be released).

Initially, we note that section 552.301(e) of the Government Code requires that a governmental body that requests an attorney general decision under section 552.301(a) must, within a reasonable time, but not later than the fifteenth business day after the date of receiving the written request, submit to the attorney general, among other items, a copy of the specific information requested, or representative samples of it, if a voluminous amount was requested, labeled to indicate which exceptions apply to which parts of the copy. *See Gov't Code* § 552.301(e). To date, the city has not submitted the documents that have been released to the requestor that contain information you claim to be excepted from disclosure under section 552.130 of the Government Code. Thus, with regard to these particular

documents, we find that the city failed to comply with section 552.301 of the Government Code in requesting this decision from us.

Because the city failed to comply with the procedural requirements of section 552.301 with regard to these documents, the information that the city has withheld from these documents is now presumed public. See Gov't Code § 552.302; see also *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The city must demonstrate a compelling interest in order to overcome the presumption that this information is now public. See *id.* Normally, a compelling interest is demonstrated when some other source of law makes the requested information confidential or when third party interests are at stake. See Open Records Decision No. 150 at 2 (1977). Although the city claims that this withheld information is excepted from disclosure pursuant to section 552.130, we have no basis for concluding that it is so excepted because the city did not submit this information to us for our review. Accordingly, we conclude that the city must release the information that it has withheld from these documents to the requestor.

However, we caution the city that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. See Gov't Code § 552.352. Prior to releasing this particular information, the city should ensure that it does not constitute confidential information. If the city believes that it is indeed confidential and may not lawfully be released, the city must challenge this ruling in court as outlined below.

You claim that some of the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.¹ Information must be withheld from disclosure under the common-law right to privacy when (1) it is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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 Committee for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor seeks copies of unspecified information in which specified individuals are identified. Therefore, the request requires the city to compile reports relating to these individuals. Based on the reasoning set out in *Reporters Committee*, we conclude that such a compilation implicates the specified individuals' right to privacy to the extent that it includes arrests and investigations where the named individuals are suspects, arrestees, or

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. See Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by the common-law right to privacy.

defendants in a case. Accordingly, we conclude that to the extent that the city maintains responsive information that reveals that the specified individuals are suspects, arrestees, or defendants in a case, such information must be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

You also claim that a portion of the submitted information in Exhibit C is excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) protects records pertaining to criminal investigations or prosecutions that have concluded in a final result other than conviction or a deferred adjudication. See Gov't Code § 552.108(a)(2). You state that the information that you claim to be excepted from disclosure under section 552.108(a)(2) in Exhibit C concerns an investigation that concluded in a result other than conviction or deferred adjudication. Thus, based on that representation and our review of this information, we agree that section 552.108(a)(2) is applicable to this particular information.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. See Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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). See Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public). Accordingly, with the exception of basic information that is contained throughout the information in Exhibit C that you claim to be excepted from disclosure under section 552.108(a)(2), we conclude that the city may withhold this particular information pursuant to section 552.108(a)(2) of the Government Code.

Finally, you claim that a portion of the submitted information in Exhibit C is excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. See Gov't Code § 552.130. Accordingly, to the extent that the information that you claim to be excepted from disclosure under section 552.130 in Exhibit C constitutes a Texas license plate number, we conclude that the city must withhold this number pursuant to section 552.130 of the Government Code. Otherwise, this number must be released to the requestor.

In summary, the city must release to the requestor the information that it has withheld from the documents provided to the requestor pursuant to section 552.302 of the Government Code. To the extent that the city maintains responsive information that reveals that the specified individuals are suspects, arrestees, or defendants in a case, such information must be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. With the exception of basic information that is contained throughout the information in Exhibit C that you claim to be excepted from disclosure under

section 552.108(a)(2), we conclude that the city may withhold this particular information pursuant to section 552.108(a)(2) of the Government Code. To the extent that the information that you claim to be excepted from disclosure under section 552.130 in Exhibit C constitutes a Texas license plate number, we conclude that the city must withhold this number pursuant to section 552.130 of the Government Code.

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).

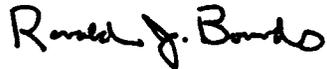
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 179085

Enc. Marked documents

c: Ms. Linda Jurek
2011 Knollwood
Kemah, Texas 77565
(w/o enclosures)

CAUSE NO. GV301455

CITY OF LEAGUE CITY,
Plaintiff,

V.

GREG ABBOTT, ATTORNEY GENERAL,
OF TEXAS,
Defendant.

§ IN THE DISTRICT COURT OF
§
§
§ TRAVIS COUNTY, TEXAS
§
§
§ 98TH JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for entry of an agreed final judgment. Plaintiff, the City of League City, Texas, and Defendant, Greg Abbott, Attorney General of Texas, appeared, by and through their respective attorneys, and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552. In compliance with Tex. Gov't Code § 552.325(c), the requestor was sent reasonable notice of this setting and of the parties' agreement that Plaintiff must withhold the information at issue. The requestor was also informed of his right to intervene in the suit to contest the withholding of this information. The requestor has not informed the parties of her intention to intervene; neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The information at issue, two vehicle license plate numbers and two operator license number, contained in police incident reports, Bates Stamped nos. 4, 7, 9, attached to Plaintiff's Petition, are excepted from public disclosure by the Tex. Gov't Code § 552.130.

FILED
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Amari Rodriguez-Mendoza
DISTRICT CLERK
TRAVIS COUNTY, TEXAS

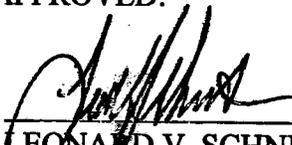
2. The City must withhold from the requestor the information at issue.
3. All costs of court are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 24th day of sept., 2003.

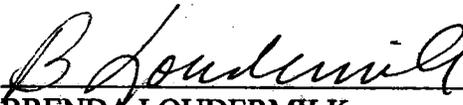


PRESIDING JUDGE

APPROVED:



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