



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

June 24, 2003

Mr. Greg Lowery  
County Attorney  
Wise County Courthouse, Room 300  
Decatur, Texas 76234

OR2003-4346

Dear Mr. Lowery:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183262.

The Wise County Attorney (the "county attorney") received a request for "the offense reports for any and all cases involving [a named individual] . . . [and] copies of any and all statements by [the named individual]." You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

We will first address your responsibilities under the Public Information Act (the "Act"). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples,

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

labeled to indicate which exceptions apply to which parts of the documents. You inform us that the county attorney received the request for information on April 11, 2003. Although you submitted some of the requested documents to this office within fifteen business days of your receipt of the request, you did not submit the remaining requested information until May 6, 2003. Consequently, you failed to comply with section 552.301(e) of the Government Code in requesting this decision from us with respect to that particular information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information at issue is public and must be released. In order to overcome the presumption that the information at issue is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). Normally, a compelling interest is demonstrated when some other source of law makes the information confidential or when third party interests are at stake. Open Records Decision Nos. 630 at 3 (1994), 150 at 2 (1977). Although you argue that sections 552.103, 552.107, 552.108, and 552.111 except this information from disclosure, these provisions do not supply a compelling interest to overcome the presumption that the information at issue is public. *See* Open Records Decision Nos. 663 (1999) (governmental body may waive sections 552.103 and 552.111), 630 at 4-5 (1994) (governmental body may waive statutory predecessor to section 552.107), 522 at 4 (1989) (discretionary exceptions in general), 473 (1987) (governmental body may waive section 552.111). However, you also contend that the submitted information is excepted from disclosure under section 552.101 of the Government Code. As section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address your arguments under that exception for the information presumed public together with your claims regarding disclosure of the information that was timely submitted. *See* Open Records Decision No. 150 (1976) (confidentiality provisions and exceptions designed to protect interests of third parties can provide compelling reasons for overcoming presumption of openness).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the doctrine of common-law privacy. 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 unspecified information concerning a certain person. In this case, we believe that the individual's right to privacy has been implicated. Therefore, to the extent that the county attorney maintains any law enforcement records that depict this individual as a suspect, arrestee, or defendant, the county attorney must withhold all such records in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy pursuant to the decision in *Reporters Committee*. See *id.* We note that information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common-law privacy and *Reporters Committee*. Cf. Gov't Code § 411.082(2)(B).

We note that section 552.022 of the Government Code governs a portion of the submitted information. Section 552.022 provides, in relevant part, as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). In this instance, section 552.022(a)(17) makes the submitted court documents public. Therefore, the county attorney may withhold this information only to the extent it is made confidential under other law. Accordingly, though the county attorney claims that this particular information is excepted from disclosure under sections 552.103, 552.107, 552.108, and 552.111, these exceptions are discretionary, and thus, do not constitute other law for the purposes of section 552.022. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 663 (1999) (governmental body

may waive sections 552.103 and 552.111), 630 at 4-5 (1994) (governmental body may waive statutory predecessor to section 552.107), 473 (1987) (governmental body may waive section 552.111); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the county attorney may not withhold the information subject to section 552.022 under section 552.103, 552.107, 552.108, or 552.111 of the Government Code. However, as you also claim section 552.130 excepts a portion of this information from public disclosure, we will address that claim.

Section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, we have marked the information in the records subject to section 552.022 that the county attorney must withhold pursuant to section 552.130.

We further note that the records subject to section 552.022 contain a social security number. A social security number or "related record" may be excepted from disclosure 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 numbers and related records that are obtained and 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 number in the file is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the county attorney should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990. The remaining information subject to section 552.022 must be released to the requestor.

You claim that the remaining submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 provides in pertinent part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime[.]

Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information at issue relates to a pending criminal case. Based upon this representation, we conclude that the release of the remaining submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases).

Section 552.108 does not except from disclosure 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 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). Thus, the county attorney must release the basic information in the remaining submitted information under section 552.108(c) of the Government Code. The rest of the remaining submitted information may be withheld under section 552.108(a)(1).

In summary, to the extent the county attorney maintains any law enforcement records that depict the individual who is the subject of this request as a suspect, arrestee, or defendant, the county attorney must withhold all such records in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy pursuant to the decision in *Reporters Committee*. We have marked the information that must be withheld from disclosure under section 552.130. A social security number may be confidential under federal law. The remaining information in the documents subject to section 552.022 must be released to the requestor. With the exception of basic information, the county attorney may withhold the remaining submitted information pursuant to section 552.108 of the Government Code.<sup>2</sup>

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<sup>2</sup>As our ruling is dispositive, we do not address your remaining arguments for this information.

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

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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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 183262

Enc. Submitted documents

c: Mr. Samuel Bishop  
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(w/o enclosures)