



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 18, 2003

Mr. Noble D. Walker, Jr.
Assistant City Attorney
Scott, Walker & Bench
Post Office Box 1353
Greenville, Texas 75403-1353

OR2003-4977

Dear Mr. Walker:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184473.

The Greenville Police Department (the "department"), which you represent, received a request for documents for a specified time interval "pertaining to or having the name [of a specified person]." You claim that the requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that the submitted information includes Texas Peace Officer's Accident Reports, which are subject to chapter 550 of the Transportation Code. Section 550.065(b) provides that, except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the 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). In this instance, we find that the requestor has not provided the department with two of the three pieces of required information under section 550.065(c)(4). Accordingly, we conclude that the department must withhold the accident reports that we have marked pursuant to section 550.065(b) of the Transportation Code.

Next, we note that section 552.101 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. 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 Indus. 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 a specified individual is identified. Thus, the request requires the department to compile information relating to this individual. Based on the reasoning set out in *Reporters Committee*, we conclude that such a compilation implicates the specified individual's right to privacy to the extent that it includes investigations where the named individual was a suspect, arrestee, or defendant in a case. Accordingly, we conclude that to the extent that the department maintains responsive information that reveals that the specified individual was a suspect, arrestee, or defendant 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 claim that portions of the requested information are excepted from disclosure pursuant to section 552.101 in conjunction with section 58.007 of the Family Code. Section 552.101 also encompasses information that is protected from disclosure by other statutes. Section 58.007 provides that juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential. *See* Fam. Code § 58.007. Section 58.007 states in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Although you claim that a portion of the remaining requested information is confidential under section 58.007, we note that section 58.007 only makes confidential information that concerns allegations of conduct in violation of penal statutes by persons who were between the ages of ten and sixteen at the time that the alleged conduct occurred. The remaining requested information does not concern the delinquent conduct of a "child" that occurred after September 1, 1997. See Fam. Code § 51.02(2) (providing that in title 3 of Family Code, "child" means person who is ten years of age or older and under seventeen years of age). Accordingly, we conclude that the department may not withhold any portion of the remaining requested information pursuant to section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

However, we note that the remaining requested information contains a social security number that may be excepted from disclosure pursuant to 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). These particular amendments make confidential social security numbers 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 Open Records Decision No. 622 (1994). The department has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain this social security number. Therefore, we have no basis for concluding that it is confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing this social security number, the department should ensure that it was not obtained or is not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

We also note that a portion of the remaining requested information 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, we conclude that the department must withhold the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code.

In summary, the department must withhold the accident reports that we have marked pursuant to section 550.065(b) of the Transportation Code. To the extent that the department maintains responsive information that reveals that the specified individual was a suspect, arrestee, or defendant 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. A social security number that is contained within the remaining requested

information may be confidential under federal law. The department must withhold the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code. The department must release the remaining requested 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).

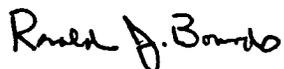
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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# 184473

Enc. Marked documents

c: Ms. Amanda Flood
P.O. Box 968
Leonard, Texas 75452
(w/o enclosures)