



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 29, 2003

Ms. Karen Saldaña
Records Clerk
Saginaw Police Department
404 South Saginaw Boulevard
Saginaw, Texas 76179

OR2003-5191

Dear Ms. Saldaña:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185010.

The Saginaw Police Department (the "department") received a request for all reports related to a named individual from August 1998 through April 2003. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.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." This provision encompasses the doctrine of common-law privacy. Common-law privacy protects information when (1) it contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the information. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Based on our review of the submitted information, we

¹Although you raise section 552.108, you do not submit arguments in support of a claim under section 552.108. Therefore, you have waived any claim of exception from disclosure under this section of the Government Code. See Gov't Code §§ 552.301, .302; Open Records Decision Nos. 586 (1991) (governmental body may waive section 552.108).

believe that a portion of the submitted information contains such highly intimate or embarrassing facts as to warrant protection under common-law privacy. In addition, the public does not have a legitimate interest in the information. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code and common-law privacy.

Further, we note that when a governmental entity compiles criminal history information pertaining to a particular individual, the compiled information takes on a character that implicates the individual's right of 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). In this instance, by requesting unspecified information about a named individual, we believe the requestor has asked the department to compile criminal history information, thereby implicating the individual's right to privacy to the extent the individual is identified as a suspect, an arrestee, or a defendant in a case. *See id.* Thus, to the extent the department holds responsive information that identifies the named individual as a suspect, an arrestee, or a defendant in a case, we conclude the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy and *Reporters Committee*.

Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code.² 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 any of the social security numbers in the file are 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 department should ensure that no such information was obtained or is maintained pursuant to any provision of law enacted on or after October 1, 1990.

Finally, we note that portions of the submitted information are excepted from public disclosure by section 552.130 of the Government Code. Section 552.130 provides in relevant part:

² Section 552.101 also encompasses information made confidential by other statutes.

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

The department must withhold the Texas driver's license, vehicle identification, and license plate numbers under section 552.130, provided that they were issued by an agency of this state.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code and common-law privacy. To the extent the department holds responsive information that identifies the named individual as a suspect, an arrestee, or a defendant in a case, the information must be withheld under section 552.101 in conjunction with common-law privacy and *Reporters Committee*. Social security numbers may be confidential under federal law. The department must withhold the Texas driver's license, vehicle identification, and license plate numbers under section 552.130, provided that they were issued by an agency of this state. The remaining 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 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 185010

Enc. Submitted documents

c: Ms. Lacy Wilkerson
9828 CR 305
Grandview, Texas 76050
(w/o enclosures)