



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 26, 2003

Ms. Patricia E. Carls
Brown & Carls
106 East Sixth Street, Suite 550
Austin, Texas 78701

OR2003-6799

Dear Ms. Carls:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188295.

You state that the Georgetown Police Department (the "department"), which you represent, received a request for "information relating to all reports responded to by Officer Chron for the time period of November 2000 through December 2001." You advise that some of the requested information has been made available to the requestor. You claim that the remaining 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 have reviewed the submitted information.

We first note that section 552.301(e) provides that 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, labeled to indicate which exceptions apply to which parts of the documents. You have not submitted a copy of the written request.

Under section 552.302 of the Government Code, a governmental body's failure to timely submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public. Information that is presumed public must be

released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Compelling reasons exist when the information is made confidential by law or affects the interest of a third party. Open Records Decision No. 630 at 3 (1994). Section 552.108, which protects law enforcement interests, is a discretionary exception and does not provide a compelling reason to overcome the presumption of openness. See Open Records Decision Nos. 586 (1991) (governmental body may waive section 552.108), 522 at 4 (1989) (discretionary exceptions in general). But see Open Records Decision Nos. 630 at 3 (1994), 586 at 3 (1991) (need of another governmental body to withhold information under predecessor to section 552.108 can provide a compelling reason under section 552.302). Thus, you may not withhold any information under section 552.108. However, the application of sections 552.101 and 552.130 provides a compelling reason to overcome the presumption of openness. Therefore, we will address the applicability of these exceptions.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information protected by the common-law right of 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). Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. 540 S.W.2d at 685. Information tending to identify a victim of sexual assault is private. Therefore, you must withhold the information that tends to identify the victim of an alleged sexual assault in report number 1017964 pursuant to common-law privacy. See Open Records Decision No. 393 (1983). We have marked this information.

Furthermore, where an individual's criminal history information has been compiled by a governmental entity, the compiled information takes on a character that implicates the individual's right to 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). Based on the reasoning set out in *Reporters Committee*, such a compilation implicates an individual's right to privacy to the extent that it includes arrests and investigations where the individual is a suspect, arrestee, or defendant in a case. Accordingly, we conclude that to the extent that the department maintains responsive criminal history information that reveals that an individual is 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.

Section 552.101 also encompasses information made confidential by statute. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. The relevant language of section 58.007(c) reads as follows:

(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.

Report numbers 1003474, 1013650, and 1022810 involve juvenile conduct that occurred after September 1, 1997. *See, e.g.*, Fam. Code § 51.03(a)(3) (defining “conduct indicating a need for supervision” to include “voluntary absence of a child from his home without the consent of his parent or guardian for a substantial length of time or without intent to return”). It does not appear that any of the exceptions in section 58.007 apply; therefore, these reports are confidential pursuant to section 58.007(c) of the Family Code. You must withhold these reports in their entirety under section 552.101 of the Government Code. We find that report number 1008405 does not reflect juvenile conduct for purposes of section 58.007 of the Family Code. Therefore, this report may not be withheld under section 552.101 in conjunction with section 58.007.

We note that social security numbers contained within the submitted information may be confidential under section 552.101 and federal law. A social security number may be withheld in some circumstances 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 numbers are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act (the “Act”) on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties

for the release of confidential information. Prior to releasing any social security number, you should ensure that it was not obtained or maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

Finally, the submitted documents contain information that is excepted from disclosure under section 552.130. Section 552.130 excepts from disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Therefore, Texas driver's license, license plate, and vehicle identification numbers contained in the submitted information must be withheld under section 552.130. Any driver's license, license plate, or motor vehicle information not issued by a Texas agency may not be withheld under section 552.130.

In summary, the department must withhold the information we have marked in report number 1017964 under section 552.101 in conjunction with common-law privacy. To the extent that the department maintains compiled criminal history information that reveals that an individual is a suspect, arrestee, or defendant in a case, such information must also be withheld under section 552.101 and common-law privacy. The department must withhold report numbers 1003474, 1013650, and 1022810 under section 552.101 in conjunction with section 58.007 of the Family Code. Social security numbers may be excepted from disclosure under section 552.101 in conjunction with the federal Social Security Act. Texas driver's license, license plate, and vehicle identification information must be withheld under section 552.130. The remaining submitted information must be released.

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

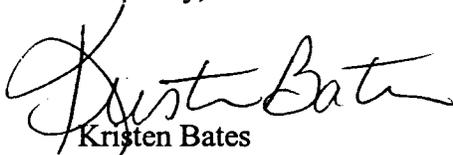
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to 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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 188295

Enc. Submitted documents

c: Mr. David Wendt
1500 Lawnmont Drive #1115
Round Rock, Texas 78664
(w/o enclosures)