



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 1, 2003

Ms. Janis Kennedy Hampton
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2003-6943

Dear Ms. Hampton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188680.

The Bryan Police Department (the "department") received a request for two specified police reports, police reports for a five year period at a specified address and involving four named individuals, certain reports on the disappearance of an individual, and any police reports on four named individuals. You advise that a portion of the requested information will be released 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 some of the submitted documents do not correspond to the information sought in the request. We therefore find that this information is not responsive to the request. This decision does not address your claimed exceptions to the disclosure of the non-responsive information, which the department need not release. We have marked this information accordingly.

We next address the department's obligations under section 552.301 of the Government Code. Subsections 552.301(a) and (b) of the Public Information Act (the "Act") provide:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [Act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). You state that the request for information was received on July 13, 2003. Therefore, the department had until ten business days following its receipt of that request to request a decision from this office regarding the requested information. You did not ask for a decision until July 29, 2003 as to whether the information at issue is excepted from disclosure. Thus, the department failed to request a decision from this office in accordance with section 552.301.

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 generally 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 provide compelling reasons 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." This section encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. 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 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). In this instance, the requestor seeks in part all reports pertaining to four named individuals. Thus, the request requires the department to compile information regarding the named individuals. Based on the reasoning set out in *Reporters Committee*,

such a compilation implicates these individuals' right to privacy to the extent that it includes arrests and investigations where one or more of the individuals is a suspect, arrestee, or defendant in a case. Accordingly, to the extent that the department maintains information relating to arrests and investigations where an individual named in the request is a suspect, arrestee, or defendant, we conclude that such information must be withheld in its entirety pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

Further, the court in *Industrial Foundation* considered intimate and embarrassing information that relates 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. 540 S.W.2d at 683. This office has also determined that common-law privacy protects the following information: the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987); the results of mandatory urine testing, *id.*; illnesses, operations, and physical handicaps of applicants, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress. Open Records Decision No. 343 (1982). We have marked some information that is both highly intimate or embarrassing and of no legitimate public interest. The department must withhold the information we have marked as coming within the common-law right of privacy under section 552.101.

Section 552.101 also encompasses information deemed confidential by statute. Included among the submitted documents is an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for 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. Transp. Code § 550.065(c)(4)). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has not provided the department with two of the three pieces of information. Thus, you must withhold the accident report we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b).

We note that a social security number contained within the submitted information may be confidential under 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 number is confidential under

section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of 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.

We note that 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, the driver's license information and license plate and vehicle identification numbers we have marked must be withheld under section 552.130 to the extent that the information was issued in Texas. Any driver's license or motor vehicle information not issued by a Texas agency may not be withheld under section 552.130.

In summary, to the extent that the department maintains information relating to arrests and investigations where an individual named in the request is a suspect, arrestee, or defendant, such information must be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. Certain information we have marked must be withheld under section 552.101 in conjunction with common-law privacy. The accident report form we have marked must be withheld under section 552.101 in conjunction with section 550.065(b) of the Transportation Code. A social security number may be excepted from disclosure under section 552.101 in conjunction with the federal Social Security Act. Texas driver's license and motor vehicle information must be withheld under section 552.130. The remaining submitted responsive 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/lmt

Ref: ID# 188680

Enc. Submitted documents

c: Mr. David Marberry
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Lorena, TX 76655
(w/o enclosures)