



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 2, 2003

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2003-6972

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 188658.

The Mesquite Police Department (the "Department") received a request for all calls and reports relating to a specified address and two named individuals from June 1, 2002 through March 1, 2003. You assert portions of the requested information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We reviewed the information you submitted and considered the exceptions you claim.

First, we address your arguments under section 552.101 of the Government Code. Section 552.101 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, which 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). 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). Here, we believe the requestor has asked the Department to compile criminal history information, thereby implicating the individuals' right to privacy to the extent they are identified as suspects, arrestees, or defendants. *See id.* Thus, to the extent it exists, the Department must withhold information identifying the named individuals as suspects, arrestees, or defendants under section 552.101 of the Government Code in conjunction with common-law privacy and *Reporters Committee*.

Next, section 552.101 also encompasses section 261.201 of the Family Code, which reads, in pertinent part, as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a)(1), (2). Section 261.201 makes information regarding an investigation of suspected child abuse or neglect confidential. Based on your arguments and a review of Exhibit 2, we believe the information consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. Assuming that the Department has no regulations that would permit release of this type of information, we conclude the information in Exhibit 2 is confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (construing predecessor statute)*. Therefore, the Department must withhold Exhibit 2 from the requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Also, as you note, federal law governs and restricts access to criminal history record information ("CHRI") obtained from the National Crime Information Center ("NCIC"). *See 28 C.F.R. §§ 20.1 et seq.*; *Open Records Decision No. 565 at 10-12 (1990)*. The relevant federal regulations permit each state to follow its own applicable law with respect to the CHRI that it generates. *ORD 565 at 11-12*. Sections 411.083 and 411.089 of the Government Code authorize a criminal justice agency to obtain CHRI from the Texas Crime Information Center ("TCIC"). However, CHRI obtained from the TCIC network may be released by a criminal justice agency only to another criminal justice agency for a criminal

justice purpose. Gov't Code § 411.089(b)(1). Thus, CHRI generated by the federal government or another state may be obtained only in accordance with the relevant federal regulations, and CHRI obtained from the Texas Department of Public Safety or another Texas criminal justice agency through the TCIC must be withheld in accordance with subchapter F of chapter 411 of the Government Code. Accordingly, we agree that, to the extent the Department maintains CHRI obtained from the NCIC or TCIC, it must withhold such information from the requestor under chapter 411 of the Government Code.

Further, we note that the submitted information contains social security numbers that may be confidential under federal law. A social security number may be excepted from disclosure under section 552.101 of the Government Code 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 in the responsive records are confidential under section 405(c)(2)(C)(viii)(I), and therefore, excepted from public disclosure under section 552.101 and the referenced federal provision. However, we caution the Department 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 no such information was obtained or is maintained by the Department pursuant to any provision of law enacted on or after October 1, 1990.

Last, as you acknowledge, the submitted documents contain information subject to section 552.130 of the Government Code. This provision excepts from public disclosure information relating to a driver's license or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Here, the submitted information contains driver's license numbers, license plate numbers and associated expiration dates, and a vehicle identification number. Therefore, the Department must withhold the motor vehicle information, which you have highlighted and we have marked, under section 552.130 of the Government Code.

In summary, the Department must withhold the following information under section 552.101 in conjunction with the stated doctrine or statute: 1) to the extent it exists, information identifying the named individuals as suspects, arrestees, or defendants under common-law privacy and *Reporters Committee*, 2) Exhibit 2 in accordance with section 261.201 of the Family Code, 3) any CHRI obtained from the NCIC or TCIC pursuant to chapter 411 of the Government Code, and 4) if applicable, social security numbers as required by the 1990 amendments to the federal Social Security Act. The Department must withhold the motor vehicle information, which you have highlighted and we have marked, under section 552.130 of the Government Code. The Department must release the remainder of the information 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,

A handwritten signature in cursive script that reads "Christen Sorrell". The signature is written in black ink and is positioned above the typed name.

Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 188658

Enc: Submitted documents

c: Ms. Fran Davis
212 East Kearney
Mesquite, Texas 75149
(w/o enclosures)