



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 11, 2003

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

OR2003-8901

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192565.

The City of Mesquite (the "city") received a request for a copy of a particular police report. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. You contend that the submitted information is confidential under section 48.101 of the Human Resources Code. Chapter 48 of the Human Resources Code governs investigations and protective services for elderly and disabled persons. Section 48.101 provides in part:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

- (1) a report of abuse, neglect, or exploitation made under this chapter;
- (2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101(a)-(b). Section 48.051 of the Human Resources Code provides that “a person having cause to believe that an elderly or disabled person is in the state of abuse, neglect, or exploitation” shall report certain prescribed information to the Texas Department of Protective and Regulatory Services (the “DPRS”) or another appropriate state agency. *See id.* § 48.051(a). The only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are the DPRS and certain other state agencies, depending on the circumstances surrounding the incident. *See id.* §§ 48.151, 48.152, 48.252, 48.301.

In this instance, the submitted information relates to an investigation made by the Mesquite Police Department of an alleged injury to an elderly individual. The submitted information reflects that the incident in question was reported to the police department. You have not informed us, and the submitted information does not otherwise reflect, that the incident was reported to DPRS or any other state agency. You also have not informed us, and the submitted information does not otherwise reflect, that the police department has referred the matter to the DPRS or any other state agency or that the DPRS or any other state agency is investigating the incident. We therefore conclude that the submitted information is not confidential under section 48.101 of the Human Resources Code and thus is not excepted from disclosure under section 552.101 of the Government Code in conjunction with section 48.101.

We note, however, that the submitted information includes the social security numbers of members of the public. These social security numbers are confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if they were obtained or are maintained by a governmental body under any provision of law enacted on or after October 1, 1990. *See Open Records Decision No. 622 at 2-4 (1994)*. It is not apparent to this office that the social security numbers in question here are confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes the city to obtain or maintain a social security number. Thus, we have no basis for concluding that the social security numbers contained in the submitted information were obtained or are maintained under such a law and are therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See Gov't Code §§ 552.007, .352*. Therefore, before

releasing the social security numbers that we have marked, the city should ensure that they were not obtained and are not maintained under any provision of law enacted on or after October 1, 1990.

Section 552.101 of the Government Code also encompasses the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). When a law enforcement agency compiles criminal history information with regard to a particular individual, the compiled information takes on a character that implicates that 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). Therefore, to the extent that the submitted information contains a compilation of any individual's criminal history, the city must withhold any such information under section 552.101 of the Government Code in conjunction with *Reporters Committee*.

We also note that the submitted information includes a Texas driver's license number. Section 552.130 of the Government Code excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). The city must withhold the Texas driver's license number that we have marked under section 552.130.

In summary: (1) the city may be required to withhold the marked social security numbers under section 552.101 of the Government Code in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code; (2) any information that represents a compilation of an individual's criminal history must be withheld under section 552.101 in conjunction with *Reporters Committee*; and (3) the city must withhold the marked Texas driver's license number under section 552.130. The rest of the 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).

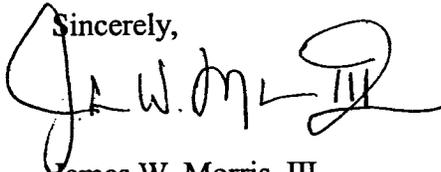
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 192565

Enc: Submitted documents

c: Mr. R. Royce Jensen  
2626 John West Road  
Mesquite, Texas 75150  
(w/o enclosures)