



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

January 15, 2004

Mr. Robert R. Ray  
Assistant City Attorney  
City of Longview  
P.O. box 1952  
Longview, Texas 75606-1952

OR2004-0331

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194498.

The City of Longview (the "city") received a request for two specified police reports pertaining to a named individual. The requestor also notes that the named individual "has filed a petition for expunction of records, case No. 2003-2181-B, in the 124<sup>th</sup> District Court regarding records kept by the city police department," and seeks "a copy of the records [the named individual] seeks to have expunged." You claim that one of the submitted reports is excepted from disclosure in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 51.14 of the Family Code, and that additional information in this report as well as in the remaining report is excepted from disclosure under section 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We first address the issue of whether a petition for expunction of the records at issue has been filed with the court. Articles 55.01 through 55.05 of the Code of Criminal Procedure provide for the expunction of criminal records in certain limited circumstances. Article 55.03 prescribes the effect of an expunction order and provides:

When the order of expunction is final:

- (1) the release, dissemination, or use of the expunged records and files for any purpose other than a purpose described by

Section 411.083(a) or (b)(1), (2), or (3), Government Code, is prohibited;

(2) except as provided in Subdivision 3 of the article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and

(3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

Act of May 31, 2003, 78<sup>th</sup> Leg., R.S., ch. 1236, 2003 Tex. Sess. Law Serv. 3500 (Vernon) (to be codified as an amendment to Code Crim. Proc. art. 55.03). Article 55.04 imposes sanctions for violations of an expunction order, and provides in pertinent part:

Sec. 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state ... and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

*Id.* Art. 55.04 § 1.

This office has previously determined that the expunction statute prevails over the Public Information Act (the "Act"). Open Records Decision No. 457 at 2 (1987) (governmental body prohibited from releasing or disseminating arrest records subject to expunction order, as "those records are not subject to public disclosure under the [Act]"). However, you do not inform us, nor does the information you have provided to us reveal, whether or when any petition for expunction was granted. Thus, if an order for expunction of the submitted records has been granted, then article 55.03 of the Code of Criminal Procedure prohibits the city from releasing the submitted records to the requestor. In the event that no expunction order has been entered that applies to the submitted records, we will address your raised exceptions to disclosure.

Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information that is protected from disclosure by other statutes. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74<sup>th</sup> Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon).

Case number 93-013128, which you have submitted to this office, involves juvenile conduct that occurred prior to January 1, 1996. Therefore, case number 93-013128 is confidential under the former section 51.14(d) of the Family Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code. As we are able to make this determination, we need not address your argument under section 552.130 for this information. We will, however, address section 552.130 as it applies to the remaining submitted information.

Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code § 552.130.* Accordingly, we agree that the city must withhold the Texas driver's license numbers that you have marked in case number 93-009173 pursuant to section 552.130 of the Government Code.

Finally, we note that case number 93-009173 contains social security numbers that may be confidential under federal law. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained or 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 Open Records Decision No. 622 (1994).* The city has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain these social security numbers. Therefore, we have no basis for concluding that they are confidential under federal law. We caution the city, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing these social security numbers, the city should ensure that they were not obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

In summary, if an order for expunction of the submitted records has been granted, then article 55.03 of the Code of Criminal Procedure prohibits the city from releasing the submitted records to the requestor. In the event that no expunction order has been entered, the city must do the following: withhold case number 93-013128 pursuant to section 552.101 in conjunction with former section 51.14(d) of the Family Code; withhold social security numbers that are contained in the remaining submitted information if confidential under federal law; withhold the information that you have marked in the remaining submitted information pursuant to section 552.130 of the Government Code; and release the remaining submitted 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 Department of Public 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,

  
Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/jh

Ref: ID# 194498

Enc. Marked documents

c: Mr. John Lynch  
Longview News-Journal  
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(w/o enclosures)