



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 15, 2004

Ms. Julie Joe  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2004-3079

Dear Ms. Joe:

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#199456.

The Travis County Sheriff's Office (the "sheriff") received a request for the "police history" for two named individuals. You state that you will release a portion of the requested information to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address your obligations under the Act. Subsections 552.301(a) and (b) 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.

You acknowledge that you failed to request a decision within the ten business day period mandated by section 552.301(a) of the Government Code. Because the request for a decision was not timely submitted, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); see Open Records Decision No. 630 (1994). 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." Section 552.101 encompasses common law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor asks for all information concerning two named individuals. In this case, we believe that the individuals' right to privacy has been implicated. Thus, where the named individuals are possible suspects, arrestees or defendants, we conclude that you must withhold this information under common law privacy as encompassed by section 552.101 of the Government Code. See *id.* We note, however, that information related to routine traffic violations is not excepted from disclosure under section 552.101 in conjunction with common law privacy and *Reporters Committee*. Cf. Gov't Code § 411.082(2)(B) .

Section 552.101 also encompasses information protected by other statutes. As such, we next address your claim that portions of the requested information are excepted from disclosure under section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201(a) of the Family Code provides 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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because a portion of the requested information consists of reports and working papers used or developed in an investigation under chapter 261, the information is within the scope of section 261.201 of the Family Code. You have not indicated that the sheriff has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, a portion of the requested information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the sheriff must withhold this information from disclosure under section 552.101 of the Government Code as information made confidential by law. We have marked the information you must withhold pursuant to section 552.101 in conjunction with section 261.201 of the Family Code.

We note that social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure 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 any of the social security numbers in the submitted information are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the sheriff pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, we will consider your claim that portions of the requested information are excepted from disclosure under section 552.130. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas driver's license numbers you have marked and the additional driver's license numbers we have marked under section 552.130.

In summary, where the named individuals are possible suspects, arrestees, or defendants in incidents other than routine traffic violations, the sheriff must withhold this information under section 552.101 of the Government Code in conjunction with common law privacy. The sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and common law privacy. Further, the sheriff must withhold the driver's license numbers you have marked under section 552.130. All other 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).

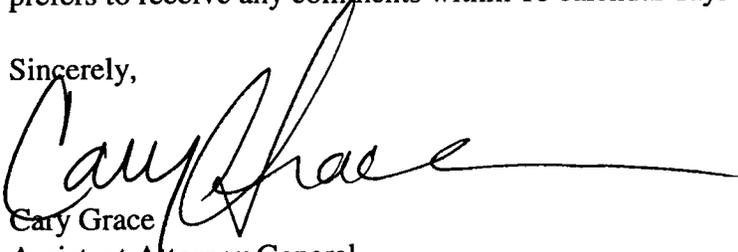
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/lmt

Ref: ID#199456

Enc. Submitted documents

c: Ms. Camila Joseph  
16020 Windermere  
Pflugerville, Texas 78660  
(w/o enclosures)