



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2004

Mr. Miles Risley
Senior Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2004-3667

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200872.

The City of Victoria (the "city") received a request for any police records concerning a named individual, including information pertaining to three specified incidents. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and 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). When a law enforcement agency is asked to compile a particular individual's criminal history information, 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).

A portion of the instant request asks for any police records concerning a named individual. We find that this portion of the request requires the city to compile the named individual's criminal history, thus, implicating the named individual's common law right of privacy. We therefore determine that, to the extent the city maintains records depicting the named individual as a suspect, arrestee, or criminal defendant, with the exception of the specified reports in the request, the city must withhold such information under section 552.101 of the Government Code in conjunction with common law privacy.

The portion of the request seeking all information about the three specific incidents does not implicate an individual's right to privacy and, therefore, such records may not be withheld under section 552.101. We note that you did not submit information pertaining to the August 2003 incident. Therefore, to the extent such information exists, we presume that it has been released. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). The city did submit information relating to the December 2001 and December 2003 incidents. Although the city does not raise additional arguments against disclosure for these records, we note that some of the information contained in these records may be confidential by law. Section 552.101 also encompasses information protected by other statutes. A social security number or "related record" 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 submitted information are confidential under section 405(c)(2)(C)(viii)(I), and are therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution the city, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, you should ensure that the number was not obtained or maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990. We note, however, that the laws protecting social security numbers are intended to protect individuals' privacy. Therefore, the requestor has a special right of access to her social security number, and it may not be withheld under section 552.101 in conjunction with the federal law. *See* Gov't Code § 552.023(b)(a person or a person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests).

Finally, these records contain motor vehicle information that is excepted under section 552.130. Section 552.130 of the Government Code provides:

- (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;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

We note, however, that section 552.130 excepts information from disclosure in order to protect individuals' privacy. Therefore, the requestor has a special right of access to her driver's license number, and such information may not be withheld under section 552.130. *See* Gov't Code § 552.023(b). We have marked the information that the city must withhold pursuant to section 552.130 of the Government Code.

In summary, to the extent the city maintains records depicting the individual named in the present request as a suspect, arrestee, or criminal defendant, with the exception of the specified reports, the city must withhold such information pursuant to section 552.101 of the Government Code in conjunction with common law privacy. The social security numbers of individuals other than the requestor may be excepted from disclosure pursuant to section 552.101. The marked motor vehicle information must be withheld under section 552.130. The remaining 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,



Melissa Vela-Martinez
Assistant Attorney General
Open Records Division

MVM/sdk

Ref: ID# 200872

Enc. Submitted documents

c: Ms. Jennifer Rose Rosales
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Victoria, Texas 77901
(w/o enclosures)