



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2004

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza - 9th Floor
El Paso, Texas 79901

OR2004-4551

Dear Ms. Hengen:

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#202825.

The City of El Paso Police Department (the "department") received a request for all information related to a named individual. You state that you will provide some information to the requestor. You claim that portions of the requested information are 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.

We begin by noting that the information you have labeled as Exhibit E is not responsive to the instant request for information, as it was created after the date that the department received the request. This ruling does not address the public availability of any information that is not responsive to the request, and the department need not release that information in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received).

We will first consider your claim that portions of the information are excepted from disclosure under section 552.101.¹ You state, and we agree, that based on the wording of the request at issue, the department is required to compile all information in its possession in which the named individual is identified. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that

¹Section 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.

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 case, we believe that the individual's right to privacy has been implicated. We note, however, that under section 552.023 of the Government Code 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. The requestor asserts that his firm has been retained to represent the named individual. Further, he has provided an authorization to release information that has been signed by the named individual. *See* § 552.229(a). Therefore, in this case, the requestor has a special right of access pursuant to section 552.023 to information that would otherwise be protected based on his client's privacy interests, including a compilation of his client's criminal history. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body for information concerning himself).

Section 552.101 also encompasses information protected by other statutes. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You state that the emergency communication district here is subject to section 772.318. Therefore, to the extent that the 9-1-1 call information at issue here was furnished by a service supplier or business service user under Health and Safety Code chapter 772, subchapter D, of which section 772.318 is a part, we agree that the originating addresses and telephone numbers are confidential and must be withheld. We note that the originating addresses and telephone numbers are listed numerous times on each of the submitted CAD documents. You must redact all references to this information on each document.

We note that the submitted information contains social security numbers associated with individuals other than the named individual. 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 contained 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 department pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, we address your claim that section 552.130 is applicable to portions of the submitted information. Section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. 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 his client's motor vehicle information, and such information may not be withheld under section 552.130. *See Gov't Code § 552.023(a)*. Therefore, with the exception of the information pertaining to the named individual's driver's license and motor vehicle title or registration, you must withhold the driver's license and motor vehicle information you have marked from disclosure under section 552.130 of the Government Code. We note that section 552.130 does not make confidential the fact that the State of Texas has issued a driver's license or vehicle title or registration.

In summary, if furnished to the department by a service supplier or business service user under chapter 772, subchapter D of the Health and Safety Code, you must withhold the 9-1-1 originating addresses and phone numbers at each place they appear on the submitted CAD documents. The social security numbers contained in the submitted information may be confidential under the federal Social Security Act and, therefore, excepted from public disclosure under section 552.101. With the exception of information pertaining to the named individual, you must withhold the driver's license and vehicle title and registration information you have marked under section 552.130. All other information must be released to this requestor.²

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

²Because some of the information is confidential with respect to the general public, if the department receives a future request for this information from a person other than the requestor acting as a representative for the named individual or the named individual himself, the department should again seek our decision.

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/krl

Ref: ID# 202825

Enc. Submitted documents

c: Mr. Gaspar Garcia, II
Garcia & Associates
1395 Garden Highway, Suite 175
Sacramento, California 95833
(w/o enclosures)