



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 13, 2004

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

OR2004-5726

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# 205013.

The El Paso Police Department (the "department") received a request for "any and all" incident reports for a specified period of time concerning a named individual and two specified addresses. 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 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." This section encompasses the common law right of privacy, which excepts from disclosure information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Additionally, 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 the department to compile all information concerning his son. As such, the son's right to privacy is implicated. Thus, if the department has any records in which the son is portrayed as a suspect, defendant, or arrestee, it would normally have to withhold such information under common law privacy as encompassed by section 552.101 of the Government Code. *See id.* We note, however, that as the parent, the requestor in this instance has a special right of access to information that would ordinarily be withheld to protect his son's common law privacy interests, and such information cannot be withheld from him solely on that basis. *See Gov't Code § 552.023(b)* (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Thus, under the present circumstances, none of the submitted information can be withheld under section 552.101 on the basis of the holding in *Reporters Committee*. Additionally, the information you have labeled Exhibit B contains information that would usually be confidential under section 552.101 in conjunction with the common law right to privacy. For the same stated reason, this information cannot be withheld from this requestor under section 552.101 in conjunction with the common law right to privacy. Further, we note that the information you have labeled Exhibit E includes the named individual's driver's license and social security number. 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.* Section 552.130 of the Government Code protects information relating to a Texas driver's license and motor vehicle title or registration. Here, however, the requestor has a special right of access pursuant to section 552.023 of the Government Code to the social security number that may otherwise be protected under section 552.101 and to the Texas driver's license number that would otherwise be protected under section 552.130. *Gov't Code § 552.023* (person or person's authorized representative has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interests). *See Gov't Code §§ 552.023(b); 552.222(c); Open Records Decision No. 481 at 4* (1987) (privacy theories not implicated when individual requests information concerning himself).<sup>1</sup>

Section 552.101 also encompasses information made confidential by statute. Section 58.007 of the Family Code governs law enforcement records relating to juvenile offenders and provides:

---

<sup>1</sup>Because some of the information is confidential with respect to the general public, if the department receives a further request for this information from an individual other than the requestor or the named person whose information is at issue, the department should again seek our decision.

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness or other involved party rather than to a suspect or offender. *See also* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating need for supervision” for purposes of title 3 of Family Code).

Some of the information you have labeled Exhibit D pertains to allegations of juvenile conduct that occurred after September 1, 1997. *See* Fam. Code § 51.02(2) (providing that in title 3 of Family Code, “child” means person who is ten years of age or older and under seventeen years of age). Thus, the information we have marked in Exhibit D is subject to section 58.007, and it does not appear that any of the exceptions in section 58.007 apply. Therefore, the marked information in Exhibit D is confidential under section 58.007(c) of the Family Code and must be withheld pursuant to section 552.101 of the Government Code.

In summary, the information we have marked in Exhibit D must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The remaining submitted information must be released to this 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 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/seg

Ref: ID# 205013

Enc. Submitted documents

c: Mr. Alfredo Bailon  
3682 Fiddlewood  
El Paso, Texas 79936  
(w/o enclosures)