



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2004

Ms. Lisa M. Salinas
Custodian of Records
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2004-7289

Dear Ms. Salinas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 207900.

The Baytown Police Department (the "department") received a request for information regarding a named informant. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law right of privacy. We have considered your claimed exception to disclosure and have 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." Gov't Code § 552.101. This section encompasses the common-law right of privacy. Ordinarily, information is protected by common-law privacy only if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). However, information may also be withheld under section 552.101 in conjunction with common-law privacy upon a showing of certain "special circumstances." See Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.*

You explain that informants and narcotics officers face imminent physical danger if their identities and operations are released to the public. Since the requestor asks for information relating to a named informant, we conclude that, in this instance, the informant's identity is

not protected under section 552.101.¹ We have, however, marked certain information relating to the informant that is, in this instance, protected by privacy. Furthermore, the records contain the names of certain officers. If these officers are undercover police officers, their identifying information is confidential under section 552.101 of the Government Code in conjunction with common-law privacy. If these officers are not undercover police officers, their identifying information must be released.

The records also contain motor vehicle information that is excepted from disclosure under section 552.130. Section 552.130 of the Government Code excepts information 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. Gov't Code § 552.130(a)(1), (2). We have marked the motor vehicle information that must be withheld from disclosure under section 552.130.

Finally, the submitted records contain a 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.* You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(vii)(I). We caution, however, that section 552.353 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, you should ensure that the number was not obtained or maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

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.*

¹If the department should receive another request for these documents from an individual who does not know the identity of this informant, the department should reassert its arguments against disclosure at that time.

§ 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).

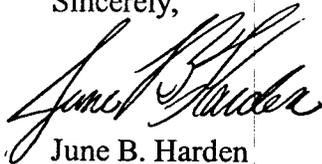
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 207900

Enc: Submitted documents

c: Mr. Stanley Schneider
Schneider & McKinney, P.C.
440 Louisiana, Suite 2110
Houston, Texas 77002
(w/o enclosures)