



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 13, 2004

Ms. Janis Kennedy Hampton
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2004-7798

Dear Ms. Hampton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211764.

The Bryan Police Department (the "department") received a request for police reports between 2000 and 2004 pertaining to incidents between two named individuals. 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.¹

Initially, we note that the department has not sought an open records decision from this office within the statutory ten business day deadline. *See* Gov't Code § 552.301. 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

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 state that the department received the present request for information on August 6, 2004. The department requested a decision from this office on August 23, 2004. Consequently, the department failed to comply with section 552.301(b) 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). This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). The applicability of section 552.101 of the Government Code provides a compelling reason. Therefore, we will consider your arguments under section 552.101.

You claim that portions of the information at issue are excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy. Section 552.101 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 information protected by the common-law right to privacy, which protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person, and the public has no legitimate interest in it. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). 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). However, information that refers to an individual solely as a victim, witness, or involved person is not private under *Reporters Committee* and may not be withheld under section 552.101 on that basis.

In this instance, the requestor is requesting copies of police reports involving the requestor and a named individual. Therefore, we do not agree that the request in this instance is for unspecified information regarding the named individuals. Accordingly, we conclude that the compilation in this matter does not implicate the specified individuals' right to privacy.

Consequently, the department may not withhold any portion of the information at issue under section 552.101 in conjunction with the common-law right to privacy on the basis of the holding in *Reporters Committee*.

Although the submitted information is not excepted from disclosure under common-law privacy, portions of the information are excepted from disclosure under sections 552.101 and 552.130. 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 department pursuant to any provision of law, enacted on or after October 1, 1990.

We note that the department might ordinarily be required to withhold all the social security numbers in the submitted information from the public under section 552.101 in conjunction with federal law. In this instance, however, one of the social security numbers belongs to the requestor. The requestor therefore has a special right of access to the information in question, and the information may not be withheld from her under section 552.101 in conjunction with federal law. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

Finally, section 552.130 excepts from disclosure certain motor vehicle information. 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[.]

Therefore, the department must withhold from disclosure the marked Texas driver's license information under section 552.130. We note, however, that section 552.130 is intended to protect the privacy rights of individuals. Accordingly, the requestor is entitled to information pertaining to her own driver's license and license plate, and such information may not be withheld from her under section 552.130. *See* Gov't Code § 552.023(a).

In summary, 1) the social security number, except for the requestor's, may be excepted from disclosure under section 552.101 in conjunction with federal law; and 2) the department must withhold the marked Texas driver's license information under section 552.130. The remaining information in the submitted documents must be released to the 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 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).

²We note that if a different requestor requests information that encompasses the requestor's social security number and motor vehicle information, the department should again seek a decision from us before releasing this particular information to such a requestor.

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,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 211764

Enc. Submitted documents

c: Ms. Aleshia Davis
118 West 18th Street
Bryan, Texas 77803
(w/o enclosures)