



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2004

Ms. Susan Camp-Lee
Sheets & Crossfield, PC
309 East Main Street
Round Rock, Texas 78664-5246

OR2004-9557

Dear Ms. Camp-Lee:

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# 212612.

The Round Rock Police Department (the "department") received a request for 1) a full copy of an incident report pertaining to a specified accident, including copies of any 9-1-1 calls, witness statements and investigation notes and 2) copies of all records, including copies of any 9-1-1 calls, relating to the accident which were generated or retained in reference to the incident. You state that some of the information will be released to the requestor, but claim that portions of the submitted 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.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses information protected by other statutes. Criminal history record information ("CHRI") obtained from the National Crime Information Center ("NCIC") or the Texas Crime Information Center ("TCIC") is confidential under federal law and subchapter F of chapter 411 of the Government Code. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. §20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.") and (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person

or agency that would not be eligible to receive the information itself.”). Section 411.083 of the Government Code provides that any CHRI maintained by the Department of Public Safety (“DPS”) is confidential. *See* Gov’t Code §411.083(a); *see also id.* §§ 411.106(b), .082(2) (defining criminal history record information). Similarly, CHRI obtained from DPS pursuant to statute also is confidential and may be disclosed only in very limited instances. *See id.* §411.084; *see also id.* §411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Furthermore, where a governmental entity has compiled an individual’s criminal history, the compiled 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).

You claim that the information you have highlighted in green constitutes CHRI that must be withheld as confidential pursuant to section 552.101. Upon review, we agree that a small portion of this information constitutes CHRI that must be withheld under section 552.101. We have marked this information accordingly. However, the remainder of the information you have highlighted in green is not protected under the federal and state statutes governing the disclosure of CHRI. *See generally* Gov’t Code § 411.081(b) (allowing police departments to disclose CHRI related to the offense for which a person is currently involved in the criminal justice system).

We note that some of the submitted information may be withheld pursuant to section 552.101 in conjunction with 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Accordingly, we have marked personal financial information within the submitted documents which must be withheld under section 552.101 in conjunction with common law privacy.

Social security numbers may also 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 file 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.

Lastly, you claim that some of the information is excepted under section 552.130 of the Government Code. 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;
- (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.

Although you claim that the information you have highlighted in yellow must be withheld under section 552.130, only portions of this information are subject to section 552.130. We have marked this information accordingly.

In summary, the department must withhold the CHRI we have marked under section 552.101. Social security numbers may be excepted under section 552.101 in conjunction with federal law. The department must withhold the information we have marked pursuant to 1) section 552.101 in conjunction with common law privacy and 2) section 552.130. The department must release all remaining information to the 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,


Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/jh

Ref: ID# 212612

Enc. Submitted documents

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(w/o enclosures)