



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2004

Ms. Luz E. Sandoval Walker
Assistant City Attorney
Office of the City Attorney
2 Civic Center Plaza - 9th Floor
El Paso, Texas 79901

OR2004-9725

Dear Mr. Walker:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 213179.

The City of El Paso (the "city") received a request for "any and all information and documentation" relating to a named individual. You state that you will release some of the information responsive to the request but claim that other requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the exceptions 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 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.*

¹ Although you raise section 552.108 of the Government Code as an exception to disclosure, you have not provided any arguments explaining how this exception is applicable to the submitted information. Therefore, we find that you have waived this section, and you may not withhold any of the information under section 552.108. See Gov't Code §§ 552.301, .302.

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 asks for all information held by the city concerning a named individual. Accordingly, we believe that the named individual's privacy rights have been implicated. Thus, to the extent the city maintains law enforcement records depicting the named individual as a possible suspect, arrestee, or criminal defendant, we conclude that the city must withhold such information under section 552.101 of the Government Code in conjunction with common law privacy. *See id.*

You also assert that the information in Exhibit F is excepted from disclosure under section 552.101 in conjunction with section 58.007 of the Family Code.² Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(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.

Family Code §58.007(c). The information in Exhibit F involves juvenile conduct that occurred on or after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, Exhibit F is confidential pursuant to section 58.007(c) of the Family Code. Accordingly, Exhibit F must be withheld in its entirety under section 552.101 of the Government Code.

We now address your section 552.130 argument as it applies to Exhibit B. Section 552.130 of the Government Code provides in relevant part:

² Section 552.101 also encompasses information made confidential by statute.

(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[.]

Gov't Code §552.130(a). Consequently, pursuant to section 552.130, the city must withhold the information we have marked in Exhibit B.

We note that Exhibit B contains insurance policy numbers. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential."³ Gov't Code § 552.136. The city must, therefore, withhold the policy numbers we have marked under section 552.136.

We note that Exhibit B also contains a social security number. A social security number or "related record" may be excepted from disclosure under section 552.101 of the Government Code 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 the social security number in the submitted information is 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 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 city pursuant to any provision of law enacted on or after October 1, 1990.

In summary, we conclude the following: (1) to the extent the city maintains law enforcement records depicting the named individual as a possible suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 in conjunction with common law privacy; (2) the city must withhold Exhibit F under section 552.101 in conjunction with 58.007 of the Family Code; (3) the city must withhold the information we have marked in Exhibit B under section 552.130; (4) the city must withhold the policy numbers we have

³ This office will raise a mandatory exception like sections 552.136 on behalf of a governmental body but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

marked in Exhibit B under section 552.136; and (5) the social security number in Exhibit B may be confidential under federal law. The remaining submitted information must be released 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,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 213179

Enc. Submitted documents

c: Ms. Magdalena G. Jara
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(w/o enclosures)