



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 30, 2004

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251

OR2004-10957

Dear Ms. Chang:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 215767.

The Houston Police Department (the "department") received a request for four specified incident reports pertaining to a named individual. You state that the department is releasing some of the responsive information. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.130, and 552.138 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that a portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 incorporates the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). When a governmental entity compiles criminal history information with regard to a particular individual as a possible criminal suspect, arrestee, or defendant, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See U.S. Dep't of*

Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749 (1989). A request for specified police reports does not implicate the named individual's right to privacy. However, to the extent that the submitted information contains a compilation of criminal history information, any such information is private under *Reporters Committee* and must be withheld from the requestor under section 552.101. *See also* Open Records Decision No. 616 at 2-3 (1993).

We note that the submitted information includes social security numbers. Section 552.101 also encompasses information protected by other statutes. The Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), makes 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* Open Records Decision No. 622 (1994). We have no basis for concluding that the social security numbers at issue 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 Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the department should ensure that no such information was obtained or is maintained pursuant to any provision of law enacted on or after October 1, 1990.

Next, you claim that some of the submitted information is excepted from release 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; [or]
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification documents issues by an agency of this state or a local agency authorized to issue an identification document.

Therefore, the department must withhold from disclosure the Texas drivers' license numbers and Texas license plate number you have marked under section 552.130. The department also must withhold the Texas identification numbers we have marked. However, the other license plate number and the vehicle identification number you have marked are not Texas numbers. Thus, these numbers are not excepted by 552.130 and must be released.

Finally, you claim that some of the submitted information is excepted from disclosure under section 552.138. Section 552.138 provides in relevant part:

(a) In this section:

(1) "Family violence shelter center" has the meaning assigned by Section 51.002, Human Resources Code.

(2) "Sexual assault program" has the meaning assigned by Section 420.003.

(b) Information maintained by a family violence shelter center or sexual assault program is excepted from the requirements of Section 552.021 if it is information that relates to:

...

(2) the location or physical layout of a family violence shelter center; [or]

(3) the name, home address, home telephone number, or numeric identifier of a current or a former client of a family violence shelter center or sexual assault program [or]

(4) the provision of services, including counseling and sheltering, to a current or former client of a family violence shelter center or sexual assault program[.]

Section 552.138 applies only to information maintained by a family violence shelter center or sexual assault program. *See* House Comm. on State Affairs, Bill Analysis, Tex. S.B. 15, 77th Leg., R.S. (2001) (Engrossed version) ("Senate Bill 15 amends the Government Code to except family violence shelter centers (center) and sexual assault programs (program) from disclosing certain public information."). The information at issue is not maintained by a family violence shelter center or sexual assault program. Accordingly, we conclude that the department may not withhold any portion of the submitted information under section 552.138 of the Government Code.

In summary, any information compiled with regard to a particular individual as a possible criminal suspect, arrestee, or defendant must be withheld under section 552.101 in conjunction with common-law privacy under *Reporters Committee*. The department must withhold the drivers' license numbers and license plate numbers it has marked under section 552.130, unless we have indicated otherwise. The department must also withhold the Texas identification numbers we have marked under section 552.130.. The social

security numbers may be excepted from disclosure under section 552.101 in conjunction with federal law. The remaining 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,

A handwritten signature in black ink that reads "Tamara L. Harswick". The signature is written in a cursive style with a large initial "T".

Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 215767

Enc. Submitted documents

c: Ms. Peggy O'Hare
Police Reporter
Houston Chronicle
P.O. Box 4260
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(w/o enclosures)