



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 30, 2004

Ms. Judith S. Rawls  
Assistant City Attorney  
City of Beaumont  
P.O. Box 3827  
Beaumont, Texas 77704-3827

OR2004-10967

Dear Ms. Rawls:

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# 216171.

The Beaumont Police Department (the "department") received a request for "copies of scene diagrams, photos, and reports of opinion or fact related to the APD investigation into [an identified incident]." You assert that you have released some of the requested information, but claim that some of the submitted information is 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 from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 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 and state law. Federal regulations prohibit the release to the general public of CHRI that is maintained in state and local CHRI systems. *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 (c)(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"); *see also* Open Records Decision No. 565 at 10-12 (1990). CHRI is defined under section 411.082 of the Government Code as

(2) information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.

Gov't Code § 411.082(2). After carefully reviewing your representations and the submitted information, we find that no portion of the information constitutes CHRI as defined by section 411.082(2). Accordingly, we conclude that the sheriff may not withhold any portion of the submitted information under section 552.101 on this basis.

However, section 552.101 also encompasses the common law right to 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). 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). We note, however, that because the common law right to privacy is a personal right that lapses at death, common law privacy does not protect information that relates only to a deceased individual. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981). Therefore, to the extent the submitted information contains compilations of criminal history information of a living individual, that information is confidential under section 552.101 and must be withheld based on the reasoning set forth in *Reporters Committee*.

The remaining submitted information contains social security numbers that 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 or 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.* Because this federal provision is intended to protect the privacy interests of individuals, this provision does not encompass the social security number of a deceased individual. *See* Attorney General Opinion H-917 at 3-4 (1976); Open Records Decision No. 272 at 1 (1981). However, the remaining submitted information contains social security numbers that belong to living individuals. We have no basis for concluding that any of these social security numbers 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 these social security numbers, 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.

Gov't Code § 552.130. We note, however, that section 552.130 is also designed to protect individuals' privacy and that the right to privacy expires at death. *See Moore*, 589 S.W.2d 489; *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146- 47 (N.D. Tex. 1979); Attorney General Opinions JM-229; H-917; Open Records Decision No. 272 at 1. Accordingly, motor vehicle record information that pertains to persons who are living and vehicles in which living individuals have an ownership interest must be withheld under section 552.130. However, information from motor vehicle records that were issued to persons who are now deceased may not be withheld under section 552.130. We also note that information relating to a driver's license and motor vehicle title or registration issued by another state or country may not be withheld under section 552.130.

In summary, any information that constitutes a compilation of the criminal history of a living individual must be withheld under section 552.101 on the basis of common law privacy. The social security numbers of living individuals may be excepted under section 552.101 in conjunction with federal law. Texas motor vehicle record information that pertains to persons who are living and vehicles in which living individuals have an ownership interest must be withheld under section 552.130. The department must release all remaining information.

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/sdk

Ref: ID# 216171

Enc: Submitted documents

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(w/o enclosures)