



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2005

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

OR2005-00147

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# 216729.

The City of Houston Police Department (the "department") received a request for a copy of offense report #38306183. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.136 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." Section 552.101 encompasses information protected from disclosure by other statutes. Prior to its repeal by the Seventy-fourth Legislature, section 51.14 of the Family Code provided, in relevant part, as follows:

(a) Except as provided by Subsection (e) of this section, or by Article 15.27, Code of Criminal Procedure, all files and records of a juvenile court, a clerk of court, or a prosecuting attorney relating to a child who is a party to a proceeding under this title are open to inspection only by:

- (1) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (2) an attorney for a party to the proceeding;

(3) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

(4) with leave of juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(b) All files and records of a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court are open to inspection only by:

(1) the professional staff or consultants of the agency or institution;

(2) the judge, probation officers, and professional staff or consultants of the juvenile court;

(3) an attorney for the child;

(4) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the work of the agency or institution; or

(5) the Texas Department of Corrections, the Department of Public Safety, and the Texas Juvenile Probation Commission, for the purpose of maintaining statistical records of recidivism, and for diagnosis and classification.

....

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

(1) a juvenile court having the child before it in any proceeding;

(2) an attorney for a party to the proceeding; and

(3) law-enforcement officers when necessary for the discharge of their official duties.

Despite the repeal of section 51.14 of the Family Code, law enforcement records pertaining to juvenile conduct that occurred prior to the effective date of the repeal continue to be confidential pursuant to section 51.14.¹ Because the submitted information pertains to juvenile conduct that occurred prior to January 1, 1996, we conclude that it is governed by section 51.14. However, after reviewing the submitted information, we note that the juvenile at issue was certified, tried, and convicted as an adult on the charge of capital murder. Because the juvenile defendant in the murder case was transferred and tried as an adult in accordance with section 54.02 of the Family Code, none of the submitted information is confidential under section 51.14. Accordingly, you may not withhold any of the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 51.14 of the Family Code.

We note that the submitted information includes social security numbers. 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 the submitted 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 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.

One of the social security numbers in the submitted documents pertains to a deceased individual. The purpose of the federal Social Security Act is to protect the privacy interests of individuals. Since the right of privacy lapses at death, the department may not withhold the social security number contained in the submitted documents that pertains to a deceased individual. *See generally Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death).

The department also asserts that some of the requested information is excepted from disclosure based on section 552.101 of the Government Code in conjunction with common law privacy. 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*

¹ *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 106, 1995 Tex. Sess. Law Serv. 2591 (Vernon).

Press, 489 U.S. 749 (1989). The submitted documents contain the criminal history record information of two individuals. The department must withhold the criminal history information we have marked under section 552.101 of the Government Code in conjunction with common law privacy. One of the individuals whose criminal history information is contained in the submitted information is deceased. As noted above, the right of privacy lapses upon death. Therefore, there is no common law privacy interest in that person's criminal history information and it may not be withheld.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. As with the federal Social Security Act and common law privacy, discussed above, section 552.130 is designed to protect individuals' privacy and the right to privacy expires at death. If the motor vehicle record information that we have marked pertains to a living person, this information must be withheld under section 552.130. If, however, this information pertains to a motor vehicle record that was issued to a person who is now deceased, the information is not excepted from disclosure under section 552.130 and must be released.

Lastly, the submitted information contains a credit card number. 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." Gov't Code § 552.136. The department must, therefore, withhold the marked credit card number under section 552.136.

In summary, the department must withhold the marked criminal history record information under section 552.101 of the Government Code in conjunction with common law privacy. The motor vehicle information that we have marked must be withheld under section 552.130 of the Government Code if that information pertains to a living person. The department must also withhold credit card information we have marked under section 552.136 of the Government Code. Prior to releasing any social security number information pertaining to a living person, 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. 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,



Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/sdk

Ref: ID# 216729

Enc. Submitted documents

c: Mr. John Crespo
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Houston, Texas 77063
(w/o enclosures)