



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2005

Ms. Mia Settle-Vinson
and Ms. Michele Austin
Assistant City Attorneys
City of Houston Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2005-00252

Dear Ms. Settle-Vinson and Ms. Austin:

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# 216457.

The Houston Police Department (the "department") received a request for "all files, records, and any other documents in the possession of the [department]" regarding a named individual, including but not limited to nine specified case numbers. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we note, and you acknowledge, that you have not submitted information related to case number 761153, which is one of the nine specifically requested, nor have you indicated that you seek to withhold this information; therefore, if such information exists, we assume you have already released it to the requestor. If you have not released this information, you must release it to the requestor at this time to the extent that it exists. *See Gov't Code §§ 552.301(a), .302.* We caution that the distribution of confidential information constitutes a criminal offense. *Gov't Code § 552.352.*

You assert that some of the requested information is excepted 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." This section encompasses the doctrine of common law privacy. Common law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to

the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (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. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). A request for information about a specific incident or offense, however, does not require the law enforcement agency to compile an individual's criminal history and thus does not implicate the individual's privacy as contemplated in *Reporters Committee*.

The present request, in part, asks for all information held by the department concerning a named individual. We find that this portion of the request requires the department to compile the criminal history of the individual, and thus implicates the individual's right to privacy as contemplated in *Reporters Committee*. Because the requestor specifically requested the information pertaining to nine specified case numbers, this information is not part of a compilation of the individual's criminal history as contemplated in *Reporters Committee*, and it may not be withheld on that basis. However, to the extent the department maintains other law enforcement information depicting the individual as a suspect, arrestee, or criminal defendant, such information is excepted from disclosure under section 552.101 in conjunction with common law privacy.

Next, we note that a social security number is confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number under any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security numbers that appear in Exhibit 9 are confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that requires or authorizes the department to obtain or maintain this social security numbers. Thus, we have no basis for concluding that these social security numbers were obtained or are maintained under such a law and are therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing the social security numbers, the department should ensure that they were not obtained and are not maintained by the department under any provision of law enacted on or after October 1, 1990.¹

¹We note, however, that this federal provision is intended to protect the privacy interests of individuals; therefore, this provision does not encompass the social security number of a deceased individual. *See* Attorney General Opinion H-917 at 3-4 (1976) (right of privacy lapses upon death); Open Records Decision No. 272 at 1 (1981). Because the complainant in Exhibit 9 is deceased, her social security number is not confidential under federal law and may not be withheld under section 552.101 on that ground.

You assert that the information you have labeled Exhibit 2 is excepted under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, we understand you to assert that Exhibit 2 pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold Exhibit 2 from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information contained in Exhibit 2 that is not otherwise confidential by law. Gov't Code § 552.007.

Next, you claim that section 552.130 of the Government Code is applicable to portions of the submitted information. Section 552.130 excepts from public disclosure information that 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(a). We agree that most of the driver's license numbers that you have marked must be withheld from the public under section 552.130. Because section 552.130 also protects personal privacy interests, the department may not withhold the deceased individual's Texas driver's license number under section 552.130.

Finally, we note that section 552.136 of the Government Code may be applicable to an account number appearing in Exhibit 9. Section 552.136 provides as follows:

- (a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or

instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. We note, however, that section 552.136 was also enacted to protect the privacy of an individual, and therefore, the protection extinguishes upon the individual's death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d at 491; *See also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. at 146-47. The department must withhold pursuant to section 552.136 the account number we have marked in Exhibit 9, but only if a living person has an interest in the account. Otherwise, the department must release the account number.

In summary, to the extent the department maintains law enforcement information other than the information specifically requested by case number that depicts the individual as a suspect, arrestee, or criminal defendant, such information is excepted from disclosure under section 552.101 in conjunction with common law privacy. Other than the social security number of the deceased individual, which must be released, the social security numbers in Exhibit 9 may be confidential under federal law. With the exception of the basic front page offense and arrest information, you may withhold Exhibit 2 from disclosure based on section 552.108(a)(2). With the exception of the Texas driver's license number of the deceased individual, which must be released, you must withhold the driver's license numbers you have marked under section 552.130. You must withhold pursuant to section 552.136 the account number we have marked in Exhibit 9, but only if a living person has an interest in the account. Otherwise, the department must release the account number. As you make no other arguments against disclosure for the remaining information, it 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).

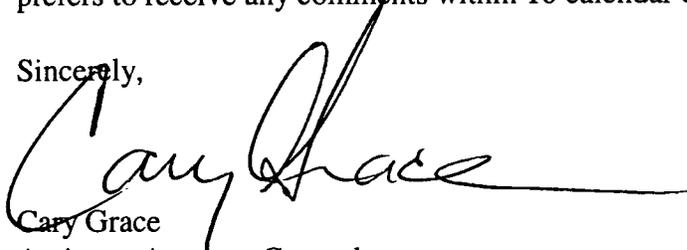
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 216457

Enc. Submitted documents

c: Mr. Christopher Richart
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(w/o enclosures)