



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2005

Mr. Galen Gatten
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702

OR2005-01031

Dear Mr. Gatten:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 217989.

The Midland Police Department (the "department") received a request from two requestors for any information pertaining to themselves and the other person. You claim that the information is excepted from disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code. 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 of privacy, which excepts from disclosure information that is (1) highly intimate or embarrassing, such that its release 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 (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). In this instance, each requestor asks the department to compile all information concerning himself and another named individual. To the extent each requestor asks the department to compile information about the other individual, that person's right to privacy is implicated. Thus, if the department has any records in which the named individual other than the requestor is portrayed as a suspect, defendant, or arrestee, the department must withhold such information under common law privacy as encompassed by section 552.101 of the Government Code. *See id.* We note, however, that each requestor has a special right of access to a compilation of his or her own criminal history, to the extent that it exists. *See*

Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates on grounds that information is considered confidential by privacy principles).

You also raise section 552.108 of the Government Code. Section 552.108(a)(1) provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime [.]". Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement or prosecution. See Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that a portion of the submitted information pertains to a pending criminal investigation. Based on your representations and our review of the submitted information, we agree that section 552.108(a)(1) applies to the information we have marked.

However, section 552.108 does not except from disclosure 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 Company 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). In Open Records Decision No. 127 (1976), this office summarized the types of information made public pursuant to *Houston Chronicle*. See Open Records Decision No. 127 at 4 (1976). Basic information includes an arrestee's social security number. *Id.* at 3. Except for the arrestee's social security number, which the department claims is confidential, the department must release the rest of the basic information.

The department asserts the arrestee's social security number and the other social security numbers in the remaining submitted records are confidential under section 552.101 of the Government Code. Section 552.101 encompasses information protected by other statutes. Social security numbers and related records are 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), if the social security number information was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994). You claim that the social security numbers at issue fall under the federal Social Security Act because they were obtained pursuant to section 411.086 of the Government Code. That provision contemplates rules that the Department of Public Safety ("DPS") shall adopt in regard to requests for criminal history information. Section 411.086(b)(2) states that such rules "may require a person requesting criminal history information about an individual to submit to [DPS] one or more of the following: . . . (E) any known identifying number of the individual, including social security number. . . ."

While you state that the collection of social security numbers “by police officers helps establish identities of criminals,” you do not specifically state whether the department obtained or maintained the social security numbers at issue in order to request criminal history information from DPS. Moreover, you do not inform us as to whether DPS actually requires or required the department to submit the social security number at issue in order to request criminal history information. We find that if the department obtained or maintains the social security numbers in order to request criminal history information from DPS, and if DPS actually requires or required the department to submit the social security numbers with its request for criminal history information, then the social security numbers are confidential under section 411.086 of the Government Code in conjunction with federal law. We note, however, because the laws regarding the confidentiality of social security numbers are intended to protect individuals’ privacy, each requestor’s own social security number may not be withheld from him or her on the basis of the federal law. *See Gov’t Code § 552.023(b).*

Lastly, we address your claim under section 552.130 of the Government Code. Section 552.130 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.” The exception in section 552.130 is based on privacy principles. Therefore, each requestor is entitled to their own driver’s license and motor vehicle information. *See Gov’t Code § 552.023(b).* However, the motor vehicle information we have marked must be withheld pursuant to section 552.130.

In summary, to the extent the department has any records in which the named individual other than the requestor is portrayed as a suspect, defendant, or arrestee, the department must withhold such information under section 552.101 in conjunction with the common law privacy concerns expressed in *Reporters Committee*. With the exception of basic information that must be released, the information we have marked may be withheld pursuant to section 552.108 of the Government Code. The social security numbers may be confidential under federal law, but each requestor has a right of access to their own social security number. The information we have marked must be withheld under section 552.130. The remaining submitted information must be released.

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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 217989

Enc. Submitted documents

c: Ms. Cynthia Stewart
1714 East Oak Avenue
Midland, Texas 79705
(w/o enclosures)

Mr. Johnny Robinson
1714 East Oak Avenue
Midland, Texas 79705
(w/o enclosures)