



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 17, 2005

Ms. Julie Joe
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2005-01478

Dear Ms. Joe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 219059.

The Travis County Sheriff's Office (the "sheriff") received a request for information pertaining to any incidents at a specified address, including information pertaining to two specified domestic disturbance incidents. You claim that the requested information is excepted from disclosure pursuant to sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted any information pertaining to the requested specified domestic disturbance incidents. As you have not submitted this information, we assume the sheriff has released it to the extent that it existed on the date the sheriff received this request. If the sheriff has not released any such records, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). We note however, the Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time that the government body received the request for information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); *see also* Open Records Decision No. 452 at 3 (1986).

Next, you acknowledge, and we agree, that the sheriff did not fully comply with the procedural requirements of section 552.301 of the Government Code in seeking this open records decision. Specifically, the sheriff failed to submit written comments explaining why its claimed exceptions apply and the requested information prior to the statutorily prescribed fifteen business day deadline. *See* Gov't Code § 552.301(e). The sheriff's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ). Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason for non-disclosure exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because the application of sections 552.101 and 552.130 of the Government Code can provide compelling reasons for overcoming the presumption of openness, we address your arguments under these exceptions.

Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This exception 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 law enforcement agency is asked to compile information that relates to a particular individual as a possible criminal suspect, arrestee, or defendant, the compiled information takes on a character that implicates that 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); Open Records Decision No. 616 at 2-3 (1993).

You assert that this request for information requires the sheriff to compile law enforcement records of the individuals who reside at the specified address and therefore implicates their privacy interests. We note, however, that this is not a request for unspecified information about any particular individual. Rather, the requestor seeks law enforcement records regarding specific incidents and a specific address. Such a request does not implicate the privacy interests of an individual. Therefore, no portion of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses information made confidential by other statutes. Section 58.007 of the Family Code governs law enforcement records relating to juvenile offenders and provides:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). For purposes of section 58.007, a child is an individual who is ten years of age or older and under 17 years of age. Fam. Code § 51.02 (defining child for purposes of title 3 of Family Code). In addition, we note that information relating to juvenile crime victims is not made confidential by section 58.007. *See* Open Records Decision No. 628 at 6 (1994) (construing predecessor statute).

A portion of the submitted information involves a juvenile runaway, conduct which is within the scope of section 58.007. *See* Fam. Code § 51.03(b) (defining “conduct indicating a need for supervision” to include “the voluntary absence of a child from his home without the consent of his parent or guardian for a substantial length of time or without intent to return”). Accordingly, the sheriff must withhold report number 030023729 from disclosure under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, we find that report number 020003556 does not involve an identified juvenile suspect. Therefore, it does not constitute a law enforcement record of a juvenile offender, is not confidential under section 58.007, and may not be withheld under section 552.101 on that basis.

We note, however, that report number 020003556 includes a social security number. 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). We have no basis for concluding that the social security number at issue is 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. Therefore, before releasing the marked social security number, the sheriff should ensure that this number was not obtained and is not maintained by the sheriff pursuant to any provision of law enacted on or after October 1, 1990.

Finally, you claim that a portion of the remaining submitted information is excepted from disclosure pursuant to 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. *See* Gov't Code § 552.130. Accordingly, we conclude that the sheriff must withhold the Texas driver's license number that you have marked pursuant to section 552.130 of the Government Code.

In summary, the sheriff must withhold report number 030023729 in its entirety pursuant to section 552.101 in conjunction with section 58.007 of the Family Code. The marked social security number may be confidential under federal law. The marked Texas driver's license number must be withheld under section 552.130 of the Government Code. 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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# 219059

Enc. Submitted documents

c: Ms. Karen J. Crawford
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(w/o enclosures)