



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 16, 2005

Mr. John T. Patterson  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2005-04198

Dear Mr. Patterson:

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# 224225.

The Waco Police Department (the "department") received a request for information related to all calls received by the department requesting that it respond to a specified location. Further, the requestor seeks information related to the arrest of a named individual whose residence was the same specified location. You state that the department will make some information available to the requestor. You claim that the remaining requested 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.

Initially, we note that the information you have labeled as Exhibits 4 and 5 is the subject of a previous ruling issued by the office. On April 5, 2005, this office issued Open Records Letter No. 2005-02910 (2005). See Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law,

facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). We presume that the pertinent facts and circumstances have not changed since the issuance of this prior ruling. Thus, we determine that the department must continue to rely on our ruling in Open Records Letter No. 2005-02910 with respect to Exhibits 4 and 5.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses the common law right of privacy, which 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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Additionally, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses is excepted from disclosure under common law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Further, when a governmental entity compiles criminal history information with regard to a particular individual as a possible criminal suspect, arrestee, or defendant, the compiled information takes on a character that implicates the 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). However, the submitted documents reflect that the named individual is now deceased. Because the privacy rights of an individual lapse upon death, we conclude that the department may not withhold any compiled criminal history information that relates to the deceased individual based upon common law privacy. 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.); see also *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) (protection afforded by provision enacted to protect privacy of an individual extinguishes upon individual’s death). The department must, however, withhold the information related to individuals other than the deceased individual, which we have marked, under section 552.101 in conjunction with common law privacy.

Section 552.101 also encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(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). The information that we have marked in Exhibit 3 involves juvenile conduct that occurred after September 1, 1997. *See* Fam. Code § 51.03(a)(3) (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”). It does not appear that any of the exceptions in section 58.007 apply; therefore, the information that we have marked is confidential pursuant to section 58.007(c) of the Family Code. You must withhold the marked information from disclosure under section 552.101 of the Government Code.

The department has highlighted information in Exhibit 3 that it contends is excepted under section 552.101 in conjunction with section 772.318 of the Health and Safety Code.<sup>1</sup> Chapter 772 of the Health and Safety Code relates to local emergency communications districts. Section 772.318 applies to an emergency communications district established in accordance with chapter 772, and provides in part:

- (a) As part of a computerized 9-1-1 service, a service supplier shall furnish current telephone numbers of subscribers and the addresses associated with the numbers on a call-by-call basis.

...

- (c) Information furnished under this section is confidential and is not available for public inspection.

---

<sup>1</sup> While you cite to section 772.218 of the Health and Safety Code in your comments to this office, we understand you to assert that 772.318 is applicable to the information. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. *See* Health & Safety Code § 772.304. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. *See id.* § 772.204.

Health & Safety Code § 773.318(a), (c). We understand the City of Waco to be part of an emergency communication district that was established under section 772.318. Based on your representations and our review, we determine that the addresses and telephone numbers you have highlighted in Exhibit 3 are excepted from public disclosure under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. *See* Open Records Decision No. 649 (1996).

You also claim that some of the information is confidential pursuant to section 552.101 in conjunction with chapter 411 of the Government Code. 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 department may not withhold any portion of the submitted information under section 552.101 on this basis.

You contend that the submitted fingerprint is excepted from disclosure under section 552.101 in conjunction with chapter 560 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov’t Code §§ 560.001 (defining “biometric identifier” to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You do not inform us and the submitted information does not indicate that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the department must withhold this information, which you have marked, under section 552.101 in conjunction with section 560.003 of the Government Code.

You note that the submitted documents include social security numbers. Social security numbers may be confidential 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.* We have no basis for concluding that the social security numbers in the submitted documents are confidential under section 405(c)(2)(C)(viii)(I), and, therefore, excepted from public disclosure under section 552.101 of the Government Code on the basis of that federal provision. We caution, however, that section 552.353 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security numbers, you should ensure that they were not obtained or are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

You have also highlighted Texas motor vehicle information in the submitted documents. Section 552.130 of the Government Code prohibits the release of 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.<sup>2</sup> *See* Gov't Code § 552.130. Accordingly, the department must withhold the Texas motor vehicle information it has marked pursuant to section 552.130 of the Government Code. We have marked a small amount of additional information that the department must also withhold under section 552.130.

Finally, you note that the submitted information contains bank account personal identification numbers that are subject to section 552.136 of the Government Code.<sup>3</sup> 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 bank account personal identification numbers, which we have marked, under section 552.136.

In summary, the department must continue to rely on our ruling in Open Records Letter No. 2005-02910 with respect to Exhibits 4 and 5. The department must withhold the information we have marked under section 552.101 in conjunction with common law privacy. The department must withhold the information we have marked under section 552.101 in conjunction with section 58.007 of the Family Code. The department must withhold the addresses and telephone numbers you have highlighted under

---

<sup>2</sup>Although the department raises section 552.130 in conjunction with section 552.101 of the Government Code, we note that section 552.130 alone is the proper exception to raise for this type of information.

<sup>3</sup>Again, although the department raises section 552.136 in conjunction with section 552.101 of the Government Code, we note that section 552.136 alone is the proper exception to raise for this type of information.

section 552.101 in conjunction with section 772.318 of the Health and Safety Code. The department must also withhold the fingerprint information, which you have marked, in conjunction with section 560.003 of the Government Code. The social security numbers may be confidential under federal law. The department must withhold the Texas motor vehicle information it has marked and that we have marked pursuant to section 552.130 of the Government Code and the bank account personal identification numbers that we have marked under section 552.136 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); *Tex. 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,

A handwritten signature in black ink, appearing to read "Cary Grace", written over a horizontal line.

Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/jev

Ref: ID# 224225

Enc. Submitted documents

c: Mr. Nick R. Bray  
Naman, Howell, Smith & Lee L.L.P.  
P.O. Box 1470  
Waco, Texas 76703  
(w/o enclosures)