



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2005

Mr. Loren B. Smith
Olson & Olson L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019

OR2005-04371

Dear Mr. Smith:

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# 224555.

The City of Friendswood (the "city"), which you represent, received a request for information relating to two named individuals. You have submitted information that you claim is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted. We assume that the city has released any other information that is responsive to this request, to the extent that such information existed when the city received the request. If not, then any such information must be released at this time.¹ We note that the Act does not require the city to release information that did not exist when it received this request or to create responsive information.²

Section 552.101 of the Government Code 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 encompasses the common-law right to privacy.

¹See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

²See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 governmental entity is asked to compile criminal history information with respect to a particular individual, 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); Open Records Decision No. 616 at 2-3 (1993).

In this instance, the request is for "any records regarding" two named individuals. This request for unspecified records implicates these individuals' right to privacy. Therefore, to the extent that the city maintains any information that relates to either of the named individuals as a criminal suspect, arrested person, or defendant, any such information is private under *Reporters Committee* and must be withheld from disclosure under section 552.101 of the Government Code.³

Section 552.101 also encompasses information that another statute makes confidential. You contend that some of the submitted information is confidential under section 58.007 of the Family Code. Section 58.007 provides in part:

(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); *see also id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating need for supervision" for purposes of title 3 of Family Code). Section

³We note that privacy under *Reporters Committee* does not encompass records of traffic offenses. *Cf.* Gov't Code § 411.082(2).

58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. Likewise, records of citations for traffic offenses are not confidential under section 58.007. *See id.* §§ 51.02(16) (definition of traffic offense), 51.03(a) (delinquent conduct does not include traffic offense), 51.03(b) (conduct indicating need for supervision does not include traffic offense), 58.007(b) (section applies to records and files relating to child who is party to proceeding under Title 3 of Family Code). We have marked information that the city must withhold under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Next, we address your claim under section 552.108. Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(b)(2) excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]” *Id.* § 552.108(b)(2). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Sections 552.108(a)(2) and 552.108(b)(2) are applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication. We understand you to assert that the rest of the submitted information relates to closed cases that did not result in a conviction or a deferred adjudication. Based on your arguments and our review of the information in question, we find that the remaining information falls within the scope of section 552.108(a)(2).

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The city must release basic information under section 552.108(c), even if the information does not literally appear on the front page of an offense or arrest report. The city may withhold the rest of the submitted information under section 552.108(a)(2).

Although basic information under section 552.108(c) includes the arrested person's social security number, that information may be confidential under section 552.101 in conjunction with federal law. The 1990 amendments to the Social Security Act make confidential social security numbers and related records that were obtained or are maintained by a state agency or political subdivision of the state under any provision of law enacted on or after October 1, 1990. *See* 42 U.S.C. § 405(c)(2)(C)(viii)(I); Open Records Decision No. 622 at 2-4 (1994). We have no basis for concluding that the social security number in question here is confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of the federal law. We caution you, however, that the Act prescribes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Prior to releasing any social security number information, the city should ensure that no such information was obtained or is maintained by the city under any provision of law enacted on or after October 1, 1990.

In summary: (1) any information maintained by the city that relates to either of the named individuals as a criminal suspect, arrested person, or defendant is private under *Reporters Committee* and must be withheld from disclosure under section 552.101 of the Government Code; (2) the city must withhold the marked information that is confidential under section 552.101 of the Government Code in conjunction with 58.007 of the Family Code; (3) except for the basic information that must be released under section 552.108(c), the city may withhold the rest of the submitted information under section 552.108(a)(2); and (4) the city may be required to withhold an arrested person's social security number under section 552.101 in conjunction with federal law.

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

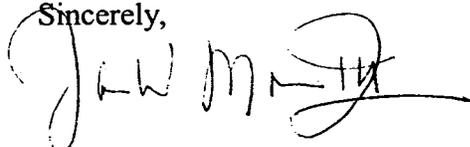
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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 'J W Morris III', written in a cursive style.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 224555

Enc: Submitted documents

c: Mr. Travis Wernecke
9730 FM 1462
Alvin, Texas 77511
(w/o enclosures)