



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 15, 2005

Lieutenant Arturo Valdez  
Central Records Division  
City of McAllen Police Department  
P.O. Box 220  
McAllen, Texas 78501

OR2005-05267

Dear Lieutenant Valdez:

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# 226274.

The McAllen Police Department (the "department") received a request for all incident reports generated during a certain time period concerning "thefts, burglaries, vandalism's [sic] and/or criminal mischief" and involving a named individual. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. See Gov't Code § 552.304 (permitting interested party to submit comments explaining why information should or should not be released).

Initially, we note that some of the submitted information is not responsive to the request, as it does not pertain to the types of incidents specified by the requestor. We have marked these documents, which this ruling does not reach and the department need not release in response to this request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd).

Next, we address the requestor's indication that the department failed to comply with the Act's procedural requirements. Under section 552.301(b), a governmental body that wishes to withhold information from public disclosure must request a ruling from this office not

later than the tenth business day after the date of receiving the written request. Within fifteen days of receiving the request, the governmental body must submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D).

The requestor asserts that he originally submitted the request for information to the department on March 16, 2005, and he has submitted a facsimile confirmation that reflects a fax was sent to the department on March 16, 2005. He has also submitted a copy of the instant request. However, the fax confirmation does not reflect that the request itself was faxed to the department, as no portion of the request appears on the face of the confirmation. Further, the requestor's copy of the request does not reflect the date on which the department received it. The department asserts that it received the request on April 4, 2005. *See* Gov't Code § 552.301(e)(1)(C). We also note that, although the requestor submitted to us a copy of the request he asserts was sent on March 16, there is no evidence to indicate that the department received it on this date. *See id.* Thus, whether the department actually received the request for information on March 16 is a question of fact. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection. *See* Open Records Decision No. 552 at 4 (1990). Therefore, based on the department's representations, we conclude that the department received the request for information on April 4, 2005, and thus was timely in submitting its request for a decision under section 552.301.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Thus, section 552.101 protects information that is deemed to be confidential under other constitutional, statutory or case law. *See* Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). In this instance, the department generally asserts that the requested information is excepted from disclosure under section 552.101, but has not directed our attention to any law that would make the submitted information confidential. *See* Gov't Code §§ 552.301, .302. We note, however, that section 552.101 encompasses common law privacy. 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, the requestor asks for all available information pertaining to specified types of incidents that

concern a named individual. In this case, we believe that the individual's right to privacy has been implicated. Thus, where the named individual is a possible suspect, arrestee, or defendant, we conclude that the department must withhold such information under common law privacy as encompassed by section 552.101 and the reasoning expressed in *Reporters Committee*. *See id.*

The department also states that the submitted information is excepted under section 552.108(b) of the Government Code. Section 552.108(b)(1) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). When this exception is claimed, the agency claiming it must reasonably explain how releasing the information would interfere with law enforcement. Open Records Decision No. 434 at 3 (1986). Although you state that this subsection applies, we find that you have not adequately explained how releasing this information would interfere with law enforcement. Consequently, the department may not withhold the submitted information under section 552.108 of the Government Code.

We note, however, that the submitted information contains social security numbers. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), 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 any of the social security numbers contained in the submitted information are 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. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

We also note that the submitted information contains Texas motor vehicle record information to which section 552.130 of the Government Code is applicable.<sup>1</sup> 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." Gov't Code § 552.130. Thus, to the extent it relates to records issued by the State of Texas, the information we have marked must be withheld under section 552.130.

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, where the named individual is a possible suspect, arrestee, or defendant, we conclude that the department must withhold such information under common law privacy as encompassed by section 552.101 and the reasoning expressed in *Reporters Committee*. The social security numbers may be confidential under federal law. To the extent it relates to records issued by the State of Texas, the department must withhold the marked information under section 552.130 of the Government Code. The remaining responsive 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,



Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/jev

Ref: ID# 226274

Enc. Submitted documents

c: Mr. Scott A. Kemp  
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(w/o enclosures)