



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2005

Ms. Lillian Guillen Graham
Assistant City Attorney
Office of the City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2005-07403

Dear Ms. Graham:

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# 230316.

The Mesquite Police Department (the "department") received a request for all records involving four named individuals, including the requestor, and four specified addresses from January 1, 1995 to the present. You claim that the some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. 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, the requestor asks the department to compile unspecified records concerning herself and three other named individuals. To the extent the requestor asks the department to compile

unspecified records concerning individuals other than herself, those individuals' rights to privacy are implicated. Thus, to the extent that the department maintains any law enforcement records that depict the named individuals, other than the requestor, as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 in conjunction with the common law privacy concerns expressed in *Reporters Committee*. See *id.* We note, however, that the requestor has a special right of access to a compilation of 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).

Furthermore, the Texas Supreme Court, in *Industrial Foundation*, also 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 as types of information considered intimate and embarrassing. 540 S.W.2d at 683. This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). We have reviewed the submitted records and marked the information that the department must withhold under section 552.101 in conjunction with common law privacy. We note, however, that the requestor has a special right of access to her own personal financial information under section 552.023, and it must therefore be released to her. See Gov't Code § 552.023.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. Section 58.007(c) provides 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). 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. Upon review, we find that a portion of the information at issue, which we have marked, involves juvenile conduct that occurred after September 1, 1997. None of the exceptions in section 58.007 apply in this instance; therefore, the document we have marked is confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 on that basis. The remaining information at issue, however, does not identify a juvenile suspect or offender. Accordingly, none of the remaining information may be withheld under section 552.101 in conjunction with section 58.007 of the Family Code.

Next, you contend that portions of the submitted information are confidential under section 772.118 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts and section 772.118 applies only to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). Section 772.118 makes confidential the originating telephone numbers and addresses of 9-1-1 callers furnished by a 9-1-1 service supplier. *See id.* at 2. You represent that the City of Mesquite is part of an emergency communication district that was established under section 772.118. Accordingly, we agree that the department must withhold the originating 9-1-1 telephone numbers and addresses that you have marked pursuant to section 552.101 in conjunction with section 772.118 of the Health and Safety Code.¹

Section 552.101 also encompasses confidential criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”). Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Based on our review of the submitted information at issue, we find that it does not contain any CHRI obtained from the NCIC or TCIC network. Consequently, none of the submitted information may be withheld on that basis.

¹As we are able to make this determination, we need not address your claim that this information is also confidential under section 771.061(a) of the Health and Safety Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification documentation issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). We have marked the Texas motor vehicle record and personal identification information the department must withhold under section 552.130. We note, however, that the requestor has a special right of access under section 552.023 to her own Texas motor vehicle record information. *See* Gov't Code § 552.023. Thus, the department must release the requestor's Texas motor vehicle record information to her pursuant to section 552.023.

We note that the submitted information contains bank account numbers that must be withheld under section 552.136 of the Government Code, which 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."² Gov't Code § 552.136. We have marked the bank account numbers that must be withheld under section 552.136.

We further note that the submitted information includes social security numbers. Section 552.147 of the Government Code³ provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. However, section 552.147 excepts information from disclosure in order to protect individuals' privacy. Therefore, the requestor is entitled to her own social security number, and it may not be withheld from her under section 552.147. *See* Gov't Code § 552.023. The remaining social security numbers that pertain to individuals other than the requestor must be withheld under section 552.147.⁴

²This office will raise mandatory exceptions to disclosure on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001)(mandatory exceptions).

³Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

⁴We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

In summary, to the extent that the department maintains unspecified law enforcement records depicting the named individuals, other than the requestor, as suspects, arrestees, or criminal defendants, such information must be withheld under section 552.101 of the Government Code in conjunction with the common law privacy concerns expressed in *Reporters Committee*. The information we have marked must be withheld under section 552.101 of the Government Code in conjunction with common law privacy. The document we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The originating 9-1-1 telephone numbers and addresses that you have marked must be withheld under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code. The Texas motor vehicle record and personal identification information we have marked must be withheld under section 552.130 of the Government Code. The bank account numbers we have marked must be withheld under section 552.136 of the Government Code. Except for the requestor's own social security number, the submitted social security numbers must be withheld under section 552.147 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,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 230316

Enc: Submitted documents

c: Ms. Julie Wardell
1504 Panola
Mesquite, Texas 75150
(w/o enclosures)