



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2005

Mr. Miles K. Risley
Senior Assistant City Attorney
City of Victoria Legal Department
P.O. Box 1758
Victoria, Texas 77902-1758

OR2005-07608

Dear Mr. Risely:

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# 230694.

The City of Victoria (the "city") received a request for any and all criminal data, including domestic disturbance calls, regarding a named individual. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses the doctrine of common law privacy. Gov't Code § 552.101. Common law privacy protects information that (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). When a law enforcement agency is asked to compile a particular individual's criminal history information, 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); *see also* Open Records Decision No. 616 at 2-3 (1993).

In the present request, the requestor asks for any and all criminal data, including domestic disturbance calls, regarding a named individual. We determine that this request is in part a request to compile the named individual's criminal history which implicates his right to privacy. Thus, to the extent the city maintains law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, the city must withhold such information pursuant to section 552.101 in conjunction with common law privacy and the decision in *Reporters Committee*.

Information that refers to an individual solely as a victim, witness, or involved person is not private under *Reporters Committee* and may not be withheld under section 552.101 on that basis. You have submitted offense report number 2005-00004780, in which the individual at issue is listed as the victim. Accordingly, this report may not be withheld under *Reporters Committee*. This report, however, contains personal financial information. The common law right to privacy also encompasses certain types of personal financial information. This office has determined that financial information that relates only to an individual ordinarily satisfies the first element of the common law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). We have marked personal financial information in the submitted documents that the city must withhold under section 552.101 in conjunction with common law privacy.

We note that offense report number 2005-00004780 contains Texas driver's license and motor vehicle information. Section 552.130 of the Government Code exempts 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. Therefore, the city must withhold the Texas driver's license and motor vehicle information we have marked pursuant to section 552.130 of the Government Code.

We further note that offense report number 2005-00004780 contains account numbers. 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. An access device number is one that may be used to "(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a

transfer originated solely by paper instrument.” *Id.* The city must, therefore, withhold the account numbers we have marked pursuant to section 552.136 of the Government Code.

Finally, we note that offense report number 2005-00004780 contains social security numbers. Section 552.147 of the Government Code¹ provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the city must withhold the marked social security numbers under section 552.147.²

In summary, to the extent the city maintains law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, the city must withhold such information pursuant to section 552.101 in conjunction with common law privacy pursuant to the decision in *Reporters Committee*. The city must withhold the personal financial information we have marked in offense report number 2005-00004780 under section 552.101 in conjunction with common law privacy. The city must also withhold the marked Texas driver’s license and motor vehicle information pursuant to section 552.130, the marked account numbers pursuant to section 552.136, and the marked social security numbers pursuant to section 552.147. The remaining submitted information must be released.

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

¹ Added 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).

² We 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.

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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 230694

Enc. Submitted documents

c: Mr. Dave Dykes
1225 Sleepytime Trail
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(w/o enclosures)