



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 8, 2005

Ms. Carol Longoria
Public Information Coordinator
University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2005-08205

Dear Ms. Longoria:

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# 231770.

The University of Texas at Austin (the "university") received a request for bidding materials submitted to the university by Absolute Background Search, Inc. ("ABS"). You take no position with respect to the public availability of the requested information. You believe, however, that the requested information may implicate the proprietary interests of ABS. You have submitted the requested information. You also notified ABS of this request for information and of its right to submit arguments to this office as to why the information should not be released.¹ We have reviewed the submitted information.

An interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from ABS. Thus, there has been no demonstration that any of the submitted information is proprietary for purposes of the Act. *See* Gov't Code § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

¹*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

We note, however, that section 552.101 of the Government Code is applicable to some of the submitted information.² Section 552.101 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 incorporates the common law right to privacy. Common law privacy protects information that 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). Information compiled by a governmental entity that relates to a particular individual as a criminal suspect, arrested person, or defendant 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). We have marked information that is protected by common law privacy under *Reporters Committee* and must be withheld under section 552.101 of the Government Code.

The common law right to privacy 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, e.g.*, 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 that the university must withhold under section 552.101 of the Government Code in conjunction with common law privacy.

We also note that the submitted documents contain Texas driver’s license information. Section 552.130 of the Government Code excepts from public disclosure information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state.³ *See* Gov’t Code § 552.130(a)(1). We have marked Texas driver’s license information that the university must withhold under section 552.130.

²Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because the Act prescribes criminal penalties for the release of confidential information. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).

³This office also will raise section 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

The submitted documents also include social security numbers. Section 552.147 of the Government Code⁴ provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.⁵ We have marked the information that the university must withhold under section 552.147.

In summary: (1) the university must withhold the information that is confidential under section 552.101 of the Government Code in conjunction with common law privacy under *Reporters Committee*; (2) the university also must withhold the personal financial information that is protected by common law privacy under section 552.101; (3) the Texas driver’s license information must be withheld under section 552.130; and (4) the social security numbers must be withheld under section 552.147. The rest of the 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 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).

⁴Added 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).

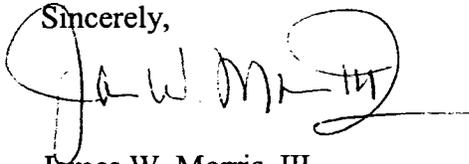
⁵We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

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); *Texas 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 Office of the Attorney General 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 "James W. Morris, III". The signature is stylized with a large initial "J" and a long horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 231770

Enc: Submitted documents

c: Mr. Curt Schwall
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(w/o enclosures)

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(w/o enclosures)