



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2005

Mr. Rashaad V. Gambrell
Assistant City Attorney
City of Houston - Legal Department
P.O. Box 368
Houston, Texas 77001

OR2005-08853

Dear Mr. Gambrell:

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# 233152.

The Houston Police Department (the "department") received a request for all arrest and incident reports pertaining to a named individual, including eight specified reports. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 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. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

¹ We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In part, the present request requires the department to compile unspecified police records regarding the named individual. Accordingly, we determine that this portion of the request implicates the individual's right to privacy. To the extent that the department maintains records other than the specified reports in which the named individual is portrayed as a suspect, arrestee, or criminal defendant, any such information is private under *Reporters Committee* and must be withheld under section 552.101. However, a request for specified reports does not implicate the privacy concerns expressed in *Reporters Committee*. Therefore, we will address the exceptions you raise with regard to these exhibits.

Section 552.101 also encompasses confidentiality provisions such as section 261.201(a) of the Family Code, which provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We have reviewed the submitted information and find that Exhibit 2 consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. Thus, this report is within the scope of section 261.201 of the Family Code. You inform us that the department has not adopted a rule that governs the release of this type of information. Therefore, we conclude that this report is confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute)*. Accordingly, the department must withhold Exhibit 2 from disclosure under section 552.101 of the Government Code as information made confidential by law.

Exhibit 8 contains Texas motor vehicle record information. Section 552.130 of the Government Code 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. In accordance

with section 552.130 of the Government Code, the department must withhold the Texas motor vehicle record information we have marked in Exhibit 8.

We note that Exhibit 8 also contains social security number information. Section 552.147 of the Government Code² provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the department must withhold the social security number we have marked in Exhibit 8 under section 552.147.³

In summary, to the extent that the department maintains records other than the specified reports in which the named individual is portrayed as a suspect, arrestee, or criminal defendant, any such information is private under *Reporters Committee* and must be withheld under section 552.101. The department must withhold Exhibit 2 under section 552.101 in conjunction with section 261.201 of the Family Code. The department must also withhold the information we have marked in Exhibit 8 pursuant to sections 552.130 and 552.147 of the Government Code. The remaining information must be released to the requestor. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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

²Added 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).

³We 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.

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); *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. 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,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/seg

Ref: ID# 233152

Enc. Submitted documents

c: Mr. Lance L. Lowry
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(w/o enclosures)