



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 28, 2005

Mr. John T. Patterson  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2005-09806

Dear Mr. Patterson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 235080.

The Waco Police Department (the "department") received a request for information pertaining to a specified incident and any other police reports pertaining to two named individuals. You indicate that the department has no information responsive to a portion of the request. We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). You state that you will release some of the requested information, including most of the specified incident report. You also state that the department will redact social security numbers pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim that a portion 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 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be

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<sup>1</sup>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.

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). 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).

The present request asks, in part, for all police reports held by the department concerning two named individuals. We find that this portion of the request requires the department to compile the criminal history of the individuals and thus implicates these individuals' right to privacy as contemplated in *Reporters Committee*. Accordingly, to the extent the department maintains records, other than the specified report, that depict the named individuals as suspects, arrestees, or criminal defendants, such information must be withheld pursuant to section 552.101 in conjunction with the common-law privacy concerns expressed in *Reporters Committee*.

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. 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.

You claim that some of the submitted information is excepted from disclosure under section 552.101 in conjunction with section 772.318 of the Health and Safety Code.<sup>2</sup> Chapter 772 of the Health and Safety Code relates to local emergency communications districts. Section 772.318 applies to an emergency communications district established in accordance with chapter 772, and provides in part:

(a) As part of a computerized 9-1-1 service, a service supplier shall furnish current telephone numbers of subscribers and the addresses associated with the numbers on a call-by-call basis.

...

(c) Information furnished under this section is confidential and is not available for public inspection.

Health & Safety Code § 773.318(a), (c). We understand the City of Waco to be part of an emergency communication district that was established under section 772.318. Based on your representations and our review, we determine that the addresses and telephone numbers we have marked are excepted from public disclosure under section 552.101 in conjunction

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<sup>2</sup>Section 552.101 also encompasses information made confidential by statute.

with section 772.318 of the Health and Safety Code. *See* Open Records Decision No. 649 (1996).

You also argue that the fingerprint information you have marked is excepted from disclosure under section 552.101 in conjunction with chapter 560 of the Government Code. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You do not inform us and the submitted information does not indicate that section 560.002 permits the disclosure of the submitted fingerprint information. We agree that the submitted fingerprints you have marked are confidential under section 560.003 and must be withheld under section 552.101.

Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1),(2). The department must withhold the information you have marked under section 552.130.

In summary, to the extent that the department maintains any information that relates to the named individuals as criminal suspects, arrestees, or defendants, other than records of the specified incident, any such information is private under *Reporters Committee* and must be withheld from the requestor under section 552.101 of the Government Code. In conjunction with section 552.101, the department must withhold the information we have marked under common-law privacy, section 772.318 of the Health and Safety Code, and section 560.003 of the Government Code. Finally, the department must withhold the marked information under section 552.130 of the Government Code. The remaining submitted 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).

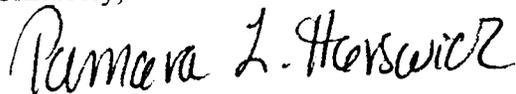
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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,



Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/sdk

Ref: ID# 235080

Enc. Submitted documents

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(w/o enclosures)