



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 21, 2005

Ms. Karen Saldana
Records Clerk
Saginaw Police Department
404 South Saginaw Boulevard
Saginaw, Texas 76179

OR2005-10538

Dear Ms. Saldana:

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# 236739.

The Saginaw Police Department (the "department") received a request for reports pertaining to a named individual for the year 2003. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note that some of the submitted information, which we have marked, is not responsive to the instant request. Accordingly, this ruling does not address the public availability of information that is not responsive to the request, and the department need not release such information in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

¹We assume that, to the extent any additional responsive information existed on the date the department received this request, such information has been released to the requestor. If you have not released any such information, you must do so at this time. *See Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances).*

Next, we must address the department's obligations under the Act. Section 552.301(b) of the Government Code provides that a governmental body that wishes to withhold requested information must "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request." Gov't Code § 552.301(b). The department failed to request a decision from this office within ten business days of receiving the request for information. Consequently, the department has failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake, or when information is confidential under other law. Open Records Decision No. 150 (1977). Although the department raises section 552.108 of the Government Code, the department in this instance has not demonstrated a compelling interest under this exception that would allow the requested information to be withheld from disclosure. *But see* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108 in certain circumstances). Accordingly, we conclude that the department may not withhold any portion of the information at issue under section 552.108 of the Government Code. However, because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address your claim under that exception.

Section 552.101 of the Government Code 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 doctrine of common law privacy, which 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). However, 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.

The present request seeks reports from 2003 that pertain to a named individual. The responsive information, however, does not depict the named individual as a suspect, arrestee, or criminal defendant. Therefore, we find that the responsive information is not part of a compilation of the individual's criminal history as contemplated by *Reporters Committee*. Accordingly, the information at issue is not excepted from disclosure under section 552.101 of the Government Code in conjunction with common law privacy and the holding in *Reporters Committee*.

We note, however, that the submitted records contain a Texas driver's license number. Section 552.130 of the Government Code prohibits the release of 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.² See Gov't Code § 552.130. Accordingly, the department must withhold the Texas driver's license number we have marked pursuant to section 552.130 of the Government Code.

The remaining information also includes a social security number that is excepted from disclosure under section 552.147 of the Government Code.³ Section 552.147 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. Therefore, the department must withhold the social security number we have marked under section 552.147.⁴

In summary, the marked information must be withheld under sections 552.130 and 552.147 of the Government Code. The remaining information at issue 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

²This office will raise mandatory exceptions to disclosure on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (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.

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,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

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Enc. Submitted documents

c: Mr. Jesse Sanchez
309 Guadalupe Drive
Saginaw, Texas 76179
(w/o enclosures)