



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 30, 2005

Ms. YuShan Chang
Assistant City Attorney
City of Houston Legal Department
P. O. Box 1562
Houston, Texas 77002

OR2005-11725

Dear Ms. Chang:

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# 239147.

The City of Houston (the "city") received a request for a copy of the occupational license of a named exotic dancer, along with any criminal history information pertaining to the same individual. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.147 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." You contend that the requested information is confidential under the decision in *N.W. Enterprises, Inc. v. City of Houston*, 352 F.3d 162 (5th Cir. 2003). The question in *N.W. Enterprises* was the constitutionality of an ordinance of the City of Houston regulating sexually-oriented businesses and specifying the personal information required of individuals applying for permits to work as managers or entertainers in such businesses. With regard to the required public disclosure under the Act of certain information provided by entertainers and managers in their permit applications, the district court in *N.W. Enterprises* concluded that

[T]here is meaningful potential danger to individuals working in sexually oriented businesses if the information in their permit applications is disclosed to the public. The Court concludes further that the potential for disclosure is likely to have a chilling effect on the applicants' protected speech. (Footnote omitted). These

dangerous and chilling effects are sufficiently severe that the information should be held confidential by the city.

N.W. Enterprises, Inc. v. City of Houston, 27 F.Supp.2d 754, 843 (S.D.Tex.1998). The Fifth Circuit Court of Appeals, in upholding the confidentiality determination of the district court, stated that “[b]ecause the district court declared the information on entertainer and manager permit applications confidential under the [Act], the City cannot disclose it to the public.” *N.W. Enters.*, 352 F.3d at 195. The appellate court also agreed that the entertainers’ and managers’ home addresses and telephone numbers are confidential. *Id.* Thus, pursuant to that decision, information revealing the identity of an entertainer or manager of a sexually-oriented business, including the entertainer or manager’s home address and telephone number, is generally confidential. Portions of the submitted information reveal the type of information protected in *N.W. Enterprises*. Therefore, this identifying information, which we have marked, must be withheld under section 552.101 in conjunction with the court’s holding in *N.W. Enterprises*.

You also argue that a portion of the submitted information must be withheld under common law privacy because it consists of a compilation of a named individual’s criminal history. Section 552.101 also encompasses the doctrine of common law privacy, which protects information if it is (1) highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has stated that 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) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See Open Records Decision Nos. 616 (1993), 565 (1990)*. While we agree that some of the information at issue constitutes a compilation, we note that the information was compiled by the named individual whose information is at issue, not the city. Thus, the information at issue was not compiled by any governmental entity. Therefore, none of the remaining information may be withheld under section 552.101 in conjunction with common law privacy.

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 social security number it has marked under section 552.147.²

¹Added 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).

²We 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.

In summary, the city must withhold 1) the identifying information we have marked under section 552.101 in conjunction with the court's holding in *N.W. Enterprises*; and 2) the social security number it has marked under section 552.147. 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,

A handwritten signature in black ink, reading "Candice M. De La Garza". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 239147

Enc. Submitted documents

c: Mr. Douglas A. Sandvig
Attorney at Law
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(w/o enclosures)