



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2006

Mr. Dan Cervenka
Assistant County and District Attorney
Milam County
204 North Central
Cameron, Texas 76520

OR2006-00611

Dear Mr. Cervenka:

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# 240415.

The Milam County and District Attorney's Office (the "district attorney") received a request for information relating to a specified criminal case. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

We first note that the district attorney did not fully comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) provides, in part, that the governmental body must submit to this office, not later than the fifteenth business day after the date of its receipt of the request for information, a copy of the request and a signed statement of the date of its receipt of the request or evidence sufficient to establish that date. *See Gov't Code* § 552.301(e)(1)(B)-(C). Section 552.302 provides that if a governmental body fails to comply with section 552.301 in requesting a decision, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

In this instance, you have not submitted a copy of the request for information to this office.¹ Likewise, you have not provided this office with a statement of the date of the district attorney's receipt of the request or any evidence sufficient to establish that date. Therefore, the submitted information is presumed to be public and must be released, unless there is a compelling reason to withhold any of the information. The presumption that information is public under section 552.302 can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Although you seek to withhold the submitted information under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). The district attorney's claim under section 552.108 is not a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). In failing to comply with section 552.301 of the Government Code, the district attorney has waived section 552.108. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Therefore, the district attorney may not withhold any of the submitted information under section 552.108 of the Government Code.

We note, however, that section 552.101 of the Government Code is applicable to some of the submitted information. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² Gov't Code § 552.101. This exception encompasses the common law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common law privacy when the information is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

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* Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of state employees' personnel records), 545 at 4 (1990) ("In general, we have found the kinds of financial information not excepted from public disclosure by common law privacy to be those regarding the receipt of governmental

¹Our description of the request is based on other information that you provided in requesting this decision.

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).

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 (the “private information”) that must be withheld from the public under section 552.101 of the Government Code in conjunction with common law privacy. We note, however, that the parties to the private information are a bank and two individuals. The two individuals appear to be the requestor and his wife. Common law privacy protects the interests of individuals, not those of business entities such as a bank. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989), *rev’d on other grounds*, 796 S.W.2d 692 (Tex. 1990)) (corporation has no right to privacy). Thus, the only parties who have privacy interests in the private information are the two individuals who appear to be the requestor and his wife. If one of these individuals is, in fact, the requestor, then he has a right of access to information that would be protected from public disclosure for the purpose of protecting his privacy interests. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).³ Likewise, if the other individual is, in fact, the requestor’s wife, then the requestor would also have a right of access to his wife’s private information if he is her authorized representative. *See* Gov’t Code § 552.023(a). In the event that the requestor does in fact have a right of access to the private information under section 552.023, the district attorney may not withhold that information from the requestor on privacy grounds under section 552.101 of the Government Code.

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.⁴ *See* Gov’t Code § 552.130(a)(1). We have marked the information that the district attorney must withhold under section 552.130.

³Section 552.023(a) provides that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a).

⁴Unlike other exceptions to disclosure, this office will raise section 552.130 on behalf of a governmental body, as it is a mandatory exception 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 contain social security numbers. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.⁵ The social security numbers that we have marked must be withheld from the public under section 552.147. We note, however, that two of the social security numbers in question are those of the two individuals who are parties to the private information. Section 552.147 also protects personal privacy interests. Thus, if one of the individuals in question is the requestor, then the district attorney may not withhold his social security number under section 552.147. Likewise, the requestor’s wife’s social security number may not be withheld under section 552.147 if the requestor is her authorized representative. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987).

Lastly, we note that some of the submitted information may be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

In summary: (1) the marked private information must be withheld from the public under section 552.101 of the Government Code in conjunction with common law privacy; (2) the Texas driver’s license information must be withheld from the public under section 552.130; and (3) the social security numbers must be withheld from the public under section 552.147. The requestor may have a right of access under section 552.023 of the Government Code to the private information and two of the social security numbers. The rest of the submitted information must be released. Information that is protected by copyright must be released in accordance with copyright law.

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

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.

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).

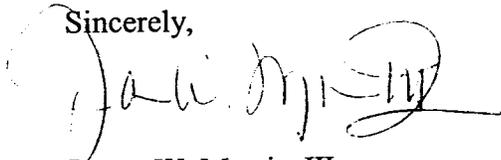
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



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

JWM/sdk

Ref: ID# 240415

Enc: Submitted documents

c: Requestor
c/o Mr. Dan Cervenka
Assistant County and District Attorney
204 North Central
Cameron, Texas 76520
(w/o enclosures)