



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 22, 2007

Ms. Susan Camp-Lee
Sheets & Crossfield, P.C.
For City of Round Rock
309 East Main Street
Round Rock, Texas 78664-5246

OR2007-02125

Dear Ms. Camp-Lee:

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# 272393.

The City of Round Rock (the "city"), which you represent, received a request for information relating to a specified vehicle, a named individual, and two specific police files. You state that some of the requested information has been released. You claim that other responsive information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

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 exception encompasses information that other statutes make confidential. Criminal history record information ("CHRI") obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions,

indictments, informations, and other formal criminal charges and their dispositions.”¹ Gov’t Code § 411.082(2). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov’t Code ch. 411 subch. F. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b). We agree that the city must withhold the CHRI that you have marked in red under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

Section 552.101 also 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). This office has determined that personal 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. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental 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 agree that the city must withhold the personal financial information that you have marked in green under section 552.101 of the Government Code in conjunction with common-law privacy. We have marked additional information that must also be withheld on this basis.

¹We note that the statutory definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety under subchapter C of chapter 521 of the Transportation Code. *See* Gov’t Code § 411.082(2) (defining “criminal history 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 or a motor vehicle title or registration issued by an agency of this state. See Gov't Code § 552.130(a)(1)-(2). We agree that the Texas driver's license and motor vehicle information that you have marked in yellow must be withheld from the public under section 552.130. However, this exception protects personal privacy. In this instance, the requestor may be the authorized representative of one of the individuals to whom the submitted driver's license information pertains. If so, then the requestor would have a right of access to that individual's driver's license information under section 552.023 of the Government Code. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).² If the requestor has a right of access to the driver's license information that we have marked, then the city may not withhold that information under section 552.130.

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.³ Gov't Code § 552.147(a). We agree that the social security numbers that appear in the submitted documents must be withheld from the public under section 552.147. However, this exception also protects personal privacy. Thus, if the requestor is the authorized representative of the individual whose social security number we have marked, then the requestor would also have a right of access to that information under section 552.023.

In summary: (1) the city must withhold the CHRI that you have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code; (2) the city must withhold the personal financial information that you have marked, as well as the additional information that we have marked, under section 552.101 in conjunction with common-law privacy; (3) the Texas driver's license and motor vehicle information must be withheld under section 552.130 of the Government Code, unless the requestor has a right of access to the driver's license information that we have marked under section 552.023 of the Government Code; and (4) the social security numbers must be withheld under section 552.147 of the Government

²Section 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).

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.

Code, unless the requestor has a right of access to the social security number that we have marked under section 552.023. The rest of the submitted information must be released.⁴

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).

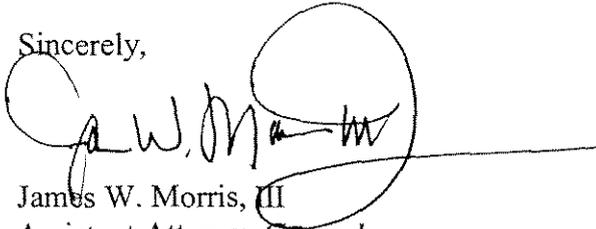
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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.

⁴In addition to the Texas driver's license information and social security number that may be subject to a right of access under section 552.023, the submitted documents contain other information that the city would be required to withhold from the public on privacy grounds. Should the city receive another request for these same records from a person who would not have a right of access to the private information, the city should resubmit these same records and request another decision. See Gov't Code §§ 552.301(a), .302.

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, appearing to read "James W. Morris, III". The signature is written in a cursive style and is enclosed within a large, hand-drawn circle. A horizontal line extends from the right side of the circle.

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

JWM/jww

Ref: ID# 272393

Enc: Submitted documents

c: Mr. Johnathan Wojtewicz
c/o Ms. Susan Camp-Lee
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246
(w/o enclosures)