



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 15, 2008

Mr. Ernesto Rodriguez
Assistant City Attorney
City of El Paso
2 Civic Center Plaza 9th Floor
El Paso, Texas 79901

OR2008-00721

Dear Mr. Rodriguez:

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# 299482.

The El Paso Police Department (the "department") received a request for information relating to an internal affairs investigation. You state that some of the requested information will be released. You also assert that some of the requested information is the subject of previous open records rulings. 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.

You contend that the submitted information relating to the department's use-of-force policy was the subject of Open Records Letter Nos. 2000-0491 (2000) and 2000-3794 (2000). You seek to withhold the use-of-force information on the basis of those rulings. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)). The information in question reflects, however, that the department's use-of-force policy has been revised since Open Records Letter Nos. 2000-0491 and 2000-3794 were issued. Therefore, because it is not clear to this office that the information in question is the same information that was the subject of the prior rulings, we conclude that the department may not withhold the submitted use-of-force information on the basis of Open Records Letter Nos. 2000-0491 and 2000-3794. *See* ORD 673 at 6-7 (prior ruling constitutes first type of previous determination under Gov't Code § 552.301(a) when, among other things, precisely the same records or information previously were submitted under Gov't Code § 552.301(e)(1)(D)). We note, however, that in Open Records Letter No. 2006-00394 (2006), we concluded that marked portions of the department's use-of-force policy are excepted from disclosure under

section 552.108(b)(1) of the Government Code. Accordingly, we conclude that to the extent that the submitted use-of-force information is the same as the marked information that was at issue in Open Records Letter No. 2006-00394, the department may continue to withhold any such information on the basis of that ruling. *See* ORD 673 at 6-7. Otherwise, the submitted use-of-force information must be released.

You also seek to withhold information relating to 911 callers. In Open Records Letter No. 2003-0708 (2003), this office issued a previous determination that authorizes the department to withhold the originating telephone numbers and addresses of 911 callers furnished by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 772.318 of the Health and Safety Code. *See* ORD 673 at 7-8 (listing elements of second type of previous determination under Gov't Code § 552.301(a)). Therefore, to the extent that the submitted information contains the telephone numbers and addresses of 911 callers that were furnished by a service supplier established in accordance with chapter 772, the department must withhold any such information under section 772.318 of the Health and Safety Code.

Next, we address your claims under sections 552.101 and 552.130 of the Government Code. Section 552.101 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 the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be satisfied. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You contend that the submitted documents contain confidential criminal history information. We find, however, that the records in question do not contain a compilation of information that depicts an individual as a suspect, arrested person, or criminal defendant. We therefore conclude that the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. We note that information relating to routine traffic violations is not private under section 552.101. *Cf. Gov't Code § 411.082(2)(B)*.

Section 552.130 of the Government Code excepts from disclosure information relating to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a)(1)-(3). We have marked Texas driver's license, motor vehicle and personal identification information that the department must withhold under section 552.130. Because this exception protects personal privacy, the requestor has a right of access to his own Texas driver's license information under section 552.023 of the Government Code, and the department may not withhold that information from this requestor under section 552.130. *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).

In summary: (1) to the extent that the submitted use-of-force information is the same as the marked information that was at issue in Open Records Letter No. 2006-00394, the department may withhold any such information on the basis of that ruling; (2) the department must withhold any telephone numbers and addresses of 911 callers furnished by a service supplier under section 772.318 of the Health and Safety Code and the previous determination issued to the department in Open Records Letter No. 2003-0708; and (3) the department must withhold the marked Texas driver's license, motor vehicle and personal identification information under section 552.130 of the Government Code.¹ The rest of the submitted information must be released.

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 file suit in

¹We note that the submitted information contains social security numbers. 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. The requestor has a right, however, to his own social security number. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

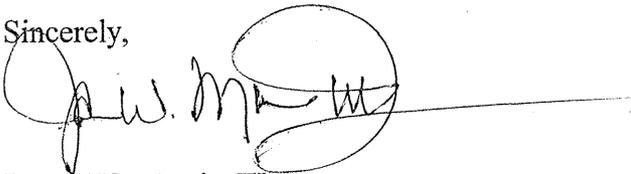
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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, appearing to read "J.W. Morris, III", with a long horizontal line extending to the right from the end of the signature.

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

JWM/ma

Ref: ID# 299482

Enc: Submitted documents

c: Mr. Mark F. Babcock
9520 Salisbury
El Paso, Texas 79924
(w/o enclosures)