



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2008

Mr. C. Patrick Phillips
Assistant City Attorney
The City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2008-10906

Dear Mr. Phillips:

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# 318341.

The City of Fort Worth (the "city") received a request for nine police reports and a lab report involving the requestor. You state that you have redacted Texas motor vehicle record information under section 552.130 of the Government Code pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You also state that you will withhold social security numbers under section 552.147 of the Government Code.¹ You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have not submitted the arrest report from May 22, 1996. Therefore, we assume the city has released this information to the extent it existed at the time of the request. If not, then the city must do so at this time. *See* Gov't Code § 552.006, .301, .302; *see* Open Records Decision No. 664 (2000) (noting that if

¹ Section 552.147(b) 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.

governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 common-law privacy. Gov't Code § 552.101. Information is protected from disclosure by the common-law right to privacy when (1) it is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Information must be withheld under section 552.101 in conjunction with common-law privacy upon a showing of "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.*

In this instance, the city informs us that release of the information it has marked identifies undercover officers, the release of which would likely cause the officers to face an imminent threat of physical danger. Based on the city's representations and our review, we agree that the city must withhold the information it has marked under section 552.101 of the Government Code in conjunction with the "special circumstances" aspect of common-law privacy. The remaining 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 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). If the governmental body does not file suit over 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,


Chris Schulz
Assistant Attorney General
Open Records Division

CS/mcf

Ref: ID# 318341

Enc. Submitted documents

c: Ms. Wanda Gomez
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Breckenridge, Texas 76424
(w/o enclosures)