



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 2, 2008

Ms. Cara Leahy White  
Taylor Oslon Adkins Sralla Elam, LLP  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

OR2008-12000

Dear Ms. White:

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# 320620.

The City of Haltom City (the "city"), which you represent, received a request for the personnel file of a named peace officer. You state that some of the requested information has been released. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.117, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Initially, we note that the requestor has specifically excluded family, financial, insurance, and medical information from her request for information. Accordingly, this information, which we have marked, is not responsive to the present request for information. The city need not release non-responsive information and this ruling will not address it.

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 the doctrine of common-law privacy.

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<sup>1</sup>You have also submitted a letter, dated June 26, 2008, which appears to be a response to a letter the requestor sent in response to your request for a ruling. We note that, as of the date of this ruling, this office has not received any correspondence from, or on behalf of, the requestor.

Common-law privacy protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. A compilation of an individual's criminal history is also highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. 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, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note that this office has found that the names, home addresses, and telephone numbers of members of the public are not excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (absent special circumstances, home addresses and telephone numbers of private citizens are generally not protected under the Act's privacy exceptions). Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The city has failed to demonstrate, however, how the remaining information it has marked is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold any portion of the remaining information it has marked under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.<sup>2</sup> Gov't Code § 552.117(a)(2). Thus, the city must withhold the personal information of the named peace officer that we have marked under section 552.117(a)(2) of the Government Code.

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 issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." *Id.*

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<sup>2</sup>"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

§ 552.130(a)(1), (2). Accordingly, the city must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code.

The remaining information also contains e-mail addresses that are excepted from disclosure under section 552.137 of the Government Code, which requires a governmental body to withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). You do not inform us that the owners of the e-mail addresses affirmatively consented to release. Therefore, the city must withhold the e-mail addresses we have marked under section 552.137.

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.<sup>3</sup> *Id.* § 552.147(a). The city may withhold the social security numbers you have marked under section 552.147.

We note that some of the remaining information may be subject to copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person 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 (1990).

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked under sections 552.117, 552.130, and 552.137 of the Government Code. The city may withhold the social security numbers you have marked under section 552.147. The remaining information must be released, but any copyrighted materials 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

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<sup>3</sup>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.

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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/eeg

Ref: ID# 320620

Enc. Submitted documents

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