



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2008

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2008-12066

Dear Mr. Weir:

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# 320526.

The San Antonio Police Department (the "department") received a request for the entire investigation file pertaining to a specified incident. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us that the submitted documents in components 2, 3, and 4 include grand jury subpoenas and the records produced pursuant to the subpoenas. The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by another person or entity acting as an agent for a grand jury are considered to be records in the constructive possession of the grand jury and therefore are not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983); *but see* Open Records Decision No. 513 at 4 (defining limits of judiciary exclusion). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean that such information is in the grand jury's constructive possession when the same information is also held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of

the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* Open Records Decision No. 513. You have submitted in components 2, 3, and 4, three summons from the Bexar County Grand Jury seeking documents from three named parties and the documents produced as a result. Based on your representations and the submitted summons, we agree that information in the custody of the department as agent of the grand jury is not subject to the Act. Consequently, the Act does not require the department to release this information to the requestor.

Next, for the remaining information at issue, component 1, we must address the department's procedural obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply not later than the tenth business day after receiving the request. Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than fifteenth business days after the date of its receipt of the request (1) written comments stating reasons why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement or sufficient evidence of the date on which the governmental body received the request; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information requested is voluminous. *See id.* § 552.301(e)(1). You state the department received the request for information no later than March 27, 2008. However, you did not request a decision from this office until July 26, 2008. *See id.* § 552.308 (concerning timeliness of action by United States or interagency mail or common contract carrier). In addition, with regard to your responsibilities under section 552.301(e)(1), you did not submit written comments explaining the applicability of the claimed exceptions, a copy of the written request for information, a signed statement or sufficient evidence of the date you received the request, or the information at issue until June 26, 2008. Consequently, you failed to comply with the procedural requirements of section 552.301 in requesting the decision from our office. Therefore, the requested information is presumed to be public information. *See id.* § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). A compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). In this instance, sections 552.101, 552.130, and 552.147 can provide compelling reasons to overcome this presumption. Therefore, we will consider whether your claimed exceptions to disclosure require the department to withhold any portion of the remaining submitted information.

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. Section 552.101 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). A compilation of an individual's criminal history record information is 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) (recognizing distinction between public records found in courthouse files and local police stations and compiled summary of information and finding significant privacy interest in compilation of one's criminal history). After review of the information at issue, we find that it does not contain a compilation of an individual's criminal history. Accordingly, the department may not withhold any portion of the submitted information as a private compilation of a person's criminal history.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App — El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The information at issue consists of a criminal investigation of official oppression. Although this investigation relates to allegations of sexual harassment, it does not constitute a sexual harassment investigation in the employment context for the purposes of *Ellen*. In addition, we find there is a legitimate public interest in the details of a criminal investigation. Therefore, the identities of the witnesses in this case are not confidential under the doctrine of common-law privacy and may not be withheld under section 552.101. However, the identifying information of the victim of sexual harassment is confidential under common-law privacy. *See* Open Records Decision Nos. 393 (1983), 339 (1982). Accordingly, we have marked the victim's identifying information contained in the remaining submitted information, and the department must withhold this information under section 552.101 in conjunction with common-law privacy. We have also marked additional private information that is protected from disclosure under section 552.101.

Next, you assert that a portion of the information at issue is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating 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 id.* § 552.130(a)(1)-(2). We have marked Texas driver's license information that the department must withhold under section 552.130.

Finally, you assert that the remaining submitted information contains social security numbers. Section 552.147(a) states that the social security number of a living person is excepted from required public disclosure. *See* Gov't Code § 552.147(a). 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. *See id.* § 552.147(a). The department may withhold the social security numbers of living persons under section 552.147 of the Government Code.

In summary: (1) the information submitted in components 2, 3, and 4 is in the custody of the department as agent of the grand jury and is not subject to disclosure under the Act; (2) the department must withhold the information we have marked in component 1 under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the department must withhold the information we have marked in component 1 under section 552.130 of the Government Code; and (4) the department may withhold the social security numbers of living persons under section 552.147 of the Government Code. The remaining information subject to the act 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).

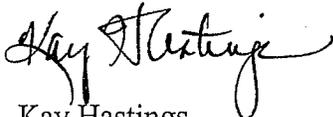
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/jh

Ref: ID# 320526

Enc. Submitted documents

c: Ms. Velma Owen
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(w/o enclosures)