



August 17, 1999

Ms. Kimberley Mickelson
Olson & Olson
Three Allen Center
333 Clay Street, Suite 3485
Houston, Texas 77002

OR99-2318

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126952.

The City of Friendswood (the “city”), which you represent, received a request for copies of all citations issued by Friendswood Police on February 17, 1999.¹ You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code (in conjunction with common-law privacy and section 58.007 of the Family Code), as well as by section 552.108 of the Government Code. You have submitted representative samples of the responsive information.² We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 58.007(c) of the Family Code, with exceptions not applicable here, prohibits public disclosure of law enforcement records and files concerning child offender conduct that occurred on or after September 1, 1997. This statute does not make citations for traffic offenses confidential. *See* Fam. Code §§ 51.02(16) (definition of traffic offense), 51.03(a) (delinquent conduct does not include traffic offense), 51.03(b) (conduct indicating need for supervision does not include traffic

¹The requestor also seeks all documents created in handling the request, the Public Information Act, however, only requires the production of information that exists at the time of the request. Open Records Decision No. 452 (1986). We also note that you have included documents titled “violation statistics detail.” We assume that these documents were included for informational purposes. As they are not responsive to this request, they need not be released.

²We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

offense), 58.007(b) (section applies to records and files relating to child who is party to proceeding under Title 3 of Family Code).

You have identified certain representative citations as having been issued to “juveniles and minors.” Section 58.007 of the Family Code applies to the records of a “child.” This term is defined as a person who is ten years of age or older and under 17 years of age or a person who is older than seventeen years of age and younger than 18 years of age and is found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age. Fam Code § 51.02(1). The records of such individuals, other than traffic citations, must be withheld under section 552.101 of the Government Code. The records of an individual who is not a “child” are not excepted from disclosure by these provisions.

You contend that certain information contained in the responsive documents is excepted from public disclosure by section 552.101 of the Government Code in conjunction with constitutional or common law privacy rights. The constitutional right to privacy protects two interests: the interest in independence in making certain important decisions related to the “zones of privacy” recognized by the United States Supreme Court, and the interest in avoiding disclosure of personal matters Open Records Decision No. 600 at 4 (1992)(citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). Only information concerning the “most intimate aspects of human affairs” are within the scope of constitutional privacy. See Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). Constitutional privacy doctrine is far narrower than its common-law counterpart. Information may be withheld as protected by the common-law right of privacy 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Our review of the submitted documents reveals no information protected by a right of privacy.

You also contend that certain responsive information may be withheld under section 552.108 of the Government Code. However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. -- Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). The subject citations consist entirely of “basic” front page offense and arrest information which may not be withheld under section 552.108 of the Government Code.

The submitted documents include information excepted under section 552.130 of the Government Code. This section governs the release and use of information obtained from motor vehicle records, and provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

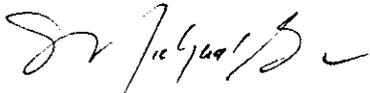
- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the driver's license number, VIN number, and the license plate number information pursuant to section 552.130.

You seek to withhold social security card number information. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the records here are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 126952

Encl. Submitted documents

cc: Mr. Jeff Branxcome
308 Wood Stream Drive
Friendswood, Texas 77546
(w/o enclosures)