



March 27, 2001

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2001-1190

Dear Ms. Hengen:

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# 145320.

The City of El Paso Police Department (the "department") received a request for "police response calls to the addresses 3425 Hollyglen Street and 3005 Lake Powell Place [and] police reports that resulted from any and all of those calls." In addition, the request asks for all police reports listed on a particular computer print-out, which you have submitted as Exhibit A. You state the department has previously furnished to the requestor much of the information responsive to the first part of the request, and that the requestor has been notified of this pursuant to section 552.232 of the Act. *See* Gov't Code § 552.232 (governmental body shall certify to the requestor that copies of all or part of the requested information, as applicable, were previously furnished to the requestor). Thus, we need not address those reports in this ruling. *See* Gov't Code § 552.301. Next, you indicate that, in Open Records Letter No. 2000-4803 (2000), this office ruled that certain reports must be withheld from disclosure. Thus, you must continue to withhold those reports in accordance with that previous decision. Finally, you claim that some of the information responsive to the second part of the request is excepted from disclosure under sections 552.101 and 552.130 of the Act. We have considered the exceptions you claim and reviewed the submitted information.

You first claim that the report submitted as Exhibit C contains information that is protected under the common law right of privacy. Section 552.101 excepts from disclosure

“information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses the doctrines of common law and constitutional privacy. Common law privacy 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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. 540 S.W.2d at 683.

This office has found that the following types of information are excepted from required public disclosure under constitutional or common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

You claim that the report submitted as Exhibit C contains information that is of a highly intimate nature, the release of which would be highly objectionable to a reasonable person. You also claim that this information is not of legitimate concern to the public. Based on our review of the report, we agree with your representations and conclude that you may withhold the highlighted information in Exhibit C under section 552.101 of the Act in conjunction with common law privacy.

You next claim that the report submitted as Exhibit D is confidential under section 51.14 of the Family Code. Section 552.101 of the Act encompasses confidentiality statutes such as section 51.14 of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. The police report submitted as Exhibit D concerns juvenile conduct that occurred prior to January 1, 1996. Therefore, the report is confidential under the former section 51.14(d) of the Family Code and must be withheld from disclosure under section 552.101 of the Act.

You next claim that some of the information in the representative sample of reports submitted as Exhibit E is protected from disclosure under section 552.130 of the Act.¹ Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 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 Texas driver's license numbers, vehicle identification numbers, and license plate numbers that appear in the requested reports under section 552.130 of the Act.

Finally, we note that social security numbers appear in the submitted reports. Social security numbers may be withheld in some circumstances under section 552.101 of the Act. 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 submitted reports are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 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 by the department pursuant to any provision of law, enacted on or after October 1, 1990.

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

¹We 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.

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 appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public 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 General Services Commission 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,



Stephen P. Agan
Assistant Attorney General
Open Records Division

SPA/seg

Ref: ID# 145320

Encl. Submitted documents

cc: Ms. Donna St. George
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