



May 17, 2001

Ms. Ann-Marie P. Sheely
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2000-2046

Dear Ms. Sheely:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147343.

The Travis County Sheriff's Office ("TCSO") received a request for eight specified police reports and any and all other reports concerning the requestor and a named individual. You state you have released to the requestor documents responsive to the open records request, specifically, those incident reports where the requestor was the suspect/defendant and criminal history information of other individuals is not implicated. However, you claim that the remainder of the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common law privacy and sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note you have not submitted information concerning six of the eight listed police reports, nor have you indicated that you seek to withhold them; therefore, to the extent they exist, we assume you have already released these reports to the requestor. If you have not released this information, you must release it to the requestor at this time. See Gov't Code §§ 552.301(a), .302.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Pursuant to *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749

(1989), where an individual's criminal history information has been compiled or summarized by a governmental entity, the information takes on a character that implicates the individual's right of privacy in a manner that the same individual records in an uncompiled state do not. Thus, when a requestor asks for all information concerning a certain named individual and that individual is a possible suspect, arrestee, or defendant, a law enforcement agency must withhold this information under section 552.101 because that individual's privacy right has been implicated. *See id.* After reviewing your arguments and the submitted documents, we believe the named individual's right to privacy has been implicated by the present request. Thus, we conclude TCSO must withhold the responsive information that identifies the named individual as a suspect, arrestee, or offender under section 552.101 of the Government Code and *Reporters Committee*.

We note that several of the incident reports contained within Tabs A and B are not excepted from public disclosure under section 552.101 and *Reporters Committee* because they do not identify the named individual as either suspect, arrestee, or offender or because the requestor has specifically requested the reports by number and therefore the specified reports are not considered to be compiled by a governmental body. Consequently, with the exception of the following, we conclude the TCSO must release to the requestor those police reports that do not identify the named individual as either suspect, arrestee, or offender and those reports that have been specifically requested by the requestor.

Some of the submitted police reports that must be released contain social security numbers. 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 police 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 TCSO pursuant to any provision of law, enacted on or after October 1, 1990.

In addition, the reports to be released contain driver's license numbers. 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 under section 552.130. However, we note that section 552.130 protects the privacy of the individual to whom the information relates. Therefore, the TCSO must release the requestor's Texas driver's license number to her. *See Gov't Code § 552.023* (an individual who is the subject of information has a special right of access to the information even though it would otherwise be protected from public disclosure by laws intended to protect that person's privacy interests).

Next, the reports to be released contain compilations of original law enforcement records and information from local criminal justice systems that are excepted from disclosure under section 552.101 as information made confidential by law. *See Reporters Committee*, 489 U.S. 749 (1989). We have marked those portions of the incident reports that must be withheld under section 552.101 and *Reporters Committee*.

Next, you have marked the witnesses' names and statements as excepted from disclosure under section 552.101 of the Government Code in conjunction with common law privacy. Under common law privacy, private facts about an individual are excepted from disclosure. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Information may be withheld from the public when (1) it is highly intimate and 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. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). Police reports regarding violence between family members are not excepted from disclosure as a matter of law under section 552.101. Open Records Decision No. 611 at 1-2 (1992). To withhold records regarding violence between family members under common law privacy, a governmental body must meet the *Industrial Foundation* test. We conclude that the witnesses' names and statements you have marked in the reports to be released are not private and may not be withheld under common law privacy.

Lastly, you assert that the witnesses' names and statements are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a)*; *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). After reviewing your arguments and the submitted information, we conclude you have not sufficiently demonstrated how release of

the witnesses' names and statements would "interfere with the detection, investigation, or prosecution of crime." Accordingly, you may not withhold the witnesses' names and statements under section 552.108 of the Government Code.

In summary, you must withhold those police reports that reference the named individual, other than the requestor, as either suspect, arrestee, or offender. The TCSO must release Tab B and report numbers 9500008165, 9500022629, 9500093355, 9500093474, 9500096860, and 9800079350. However, the TCSO must withhold the following from the reports: social security numbers if obtained or maintained by the TCSO pursuant to a law enacted on or after October 1, 1990, driver's license numbers other than the requestor's, and criminal history record information.

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 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/seg

Ref: ID# 147343

Encl. Marked documents

cc: Ms. Lisa Ann Peacock
1606 South Bagdad Road
Leander, Texas 78641
(w/o enclosures)