



June 1, 2001

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
2014 Main, Room 501
Dallas, Texas 75201

OR2001-2267

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147868.

The Dallas Police Department (the "department") received a request for internal affairs file number 94-389. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

You contend that certain information contained in the submitted information must be withheld under section 552.117 of the Government Code. Section 552.117(2) generally requires the department to withhold the following categories of information pertaining to a peace officer, as defined by article 2.12, Code of Criminal Procedure: the officer's current and former home address and home telephone number, social security number, and information revealing whether the officer has family members. Open Records Decision No. 622 (1994). Section 552.117(2), however, does not apply to former peace officers. We note that the submitted information indicates that one of the peace officers under investigation

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.

was terminated. If the individual was not a peace officer at the time the department received the present request, the information at issue is not excepted under section 552.117(2). Nevertheless, a former peace officer's section 552.117 information may be subject to required withholding under section 552.117(1), *but only if* the individual elected confidentiality for the information under section 552.024 prior to the department's receipt of the present request. We have marked the type of information that must be withheld under section 552.117 of the Government Code for those individuals who either (1) were peace officers as defined by article 2.12 of the Code of Criminal Procedure at the time the department received the present request; or (2) made a timely election under section 552.024 of the Government Code to withhold such information.

You claim that the social security numbers contained in the submitted documents are excepted from disclosure under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. Social security numbers may be withheld under some circumstances pursuant to 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 the social security number in the submitted information is 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, the department 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.

You assert that certain information contained in the submitted documents must be withheld from disclosure under section 552.130 of the Government Code. 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[.]

We have marked the type of information that the department must withhold under section 552.130 of the Government Code.

Finally, you contend that portions of the requested documents should be withheld from disclosure under the doctrine of common law 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 information that is confidential under the common law right to privacy. Information is protected by the common law right to privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of a legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that 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; *see also* Open Records Decision Nos. 470 (1978) (concluding that fact that person broke out in hives as a result of severe emotional distress is excepted by common law privacy), 455 (1987) (concluding that kinds of prescription drugs a person is taking are protected by common law privacy), 422 (1984) (concluding that details of self inflicted injuries are presumed protected by common law privacy), 343 (1982) (concluding that information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress is protected by common law privacy). Further, in Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common law privacy interest which prevents disclosure of information that would identify the victim. *See also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, *writ denied*) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). From our review of the submitted information, we find that it contains information that must be withheld pursuant to section 552.101 of the Government Code. We have marked the type of information that the department must withhold pursuant to section 552.101 in conjunction with common law privacy.

To summarize: (1) we have marked the type of information that must be withheld under section 552.117 of the Government Code for those individuals who either (a) were peace officers at the time the department received the present request, or (b) made a timely election under section 552.024 of the Government Code to withhold such information; (2) prior to releasing any social security number information, the department 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; (3) we have marked the type of information that the department must withhold under section 552.130 of the Government Code; and (4) we have marked the type of information that the department must withhold pursuant to section 552.101 in conjunction with common law privacy. The remaining information must be released to the requestor.

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).

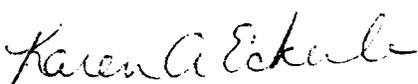
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 Hadassan 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,



Karen Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 147868

Encl.: Marked documents

cc: Mr. Van Shaw
Attorney at Law
2723 Fairmont
Dallas, Texas 75201
(w/o enclosures)