



July 17, 2002

Mr. Gary A. Scott
Assistant City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2002-3924

Dear Mr. Scott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165833.

The City of Conroe (the “city”) received a request for information relating to three named individuals. You state that the city will treat this request as a request for certain Conroe Police Department printouts, which you have submitted as Exhibits B-1 through B-6. You inform us that you have released Exhibit B-1 to the requestor. You claim, however, that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. 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.” For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *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 stated that information is excepted from disclosure 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 legitimate concern to the public. *Id.* at 685. Where an individual’s criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual’s right to privacy. See *United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Similarly, open records decisions issued by this office acknowledge this privacy interest. See Open Records Decision Nos. 616 (1993), 565 (1990). Therefore, where a request seeks a compilation of an individual’s law enforcement records, those records that indicate that the individual was arrested or was a suspect are protected by

the common-law right of privacy. We agree that the request as you have interpreted it seeks a compilation of an individual's law enforcement records. Accordingly, you must withhold from disclosure Exhibits B-2 and B-6 based on section 552.101 in conjunction with the common-law right to privacy.

We turn now to your argument that social security numbers in the submitted information are confidential under section 552.101. 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.* You claim that the social security numbers in the submitted information fall under the federal Social Security Act because they were obtained pursuant to section 411.086 of the Government Code. Section 411.086 was effective September 1, 1993. The provision contemplates rules that the Department of Public Safety ("DPS") shall adopt in regard to requests for criminal history information. Section 411.086(b)(2) states that such rules may require a person requesting criminal history information about an individual to submit to [DPS], among other things, "any known identifying number of the individual, including social security number."

You state that the social security numbers contained in the information at issue are "obtained and maintained, in part, to obtain criminal history information from the Department of Public Safety." However, you do not specifically state whether DPS actually requires or required the city to submit the social security numbers at issue in order to request criminal history information. We find that, if the city obtained or maintains the social security numbers at issue in order to request criminal history information from DPS, *and* if DPS actually requires or required the city to submit the social security number with its request for criminal history information, then such social security numbers are confidential under section 552.101 of the Government Code in conjunction with federal law.

You next assert that parts of the requested information are excepted from disclosure based on section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Based on the information you provided, we understand you to assert that Exhibits B-3 and B-4 pertain to cases that concluded in results other than conviction or deferred adjudication. Accordingly, we conclude that you may withhold these exhibits under section 552.108(a)(2).

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 Publ'g 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). Basic information includes the identification and description of the complainant. Open Records Decision No. 127 (1976).

Finally, you argue that some of the submitted information is confidential under section 552.130 of the Government Code. Section 552.130 provides in relevant part as follows:

(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[.]

Therefore, the city must withhold the driver's license numbers we have marked pursuant to section 552.130.

In summary, the city must withhold from disclosure Exhibits B-2 and B-6 under section 552.101 in connection with common-law privacy. If the city obtained or maintains the social security numbers in Exhibit B-5 in order to request criminal history information from DPS, *and* if DPS actually requires or required the city to submit the social security number with its request for criminal history information, then these social security numbers are confidential under section 552.101 in conjunction with federal law and must be withheld. With the exception of basic information, Exhibits B-3 and B-4 may be withheld under section 552.108(a)(2). Finally, driver's license numbers in Exhibit B-5 are confidential under section 552.130. 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 Hadassah Schloss at the Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

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Enc: Submitted documents

c: Ms. Nancy Hornbeak
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(w/o enclosures)