



October 15, 2002

Mr. Harold Willard  
Police Legal Advisor  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR2002-5849

Dear Mr. Willard:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170632.

The Lubbock Police Department (the “department”) received two requests from the same requestor for all calls made from or police responses to a specified address for a specific period of time and any information regarding three named individuals over a specified time period. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address the portion of the request that seeks any information regarding three named individuals. 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 Foundation v. Texas Industrial Accident Board*, 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. 540 S.W.2d 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). In this instance, the requestor asks for cases, including arrests and police reports, regarding

three named individuals. However, two of these individuals are deceased. We note that the privacy rights of an individual lapse upon death. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded”) (quoting Restatement of Torts 2d). Thus, we conclude that the department may not withhold any of the submitted information regarding these two individuals pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. *See generally* Attorney General Opinion H-917 at 3-4 (1976); *see also* Open Records Decision No. 272 at 1 (1981). However, in regard to the third individual who is not deceased, we believe that this individual’s right to privacy has been implicated. Thus, to the extent information exists where the named individual is a possible suspect, arrestee, or defendant, we conclude that you must withhold this information under common-law privacy as encompassed by section 552.101 of the Government Code. *See id.*

Section 552.101 also encompasses confidentiality provisions such as sections 51.14, 58.007, and 261.201 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 requested offense report in Exhibit J concerns juvenile conduct that occurred prior to January 1, 1996. Therefore, Exhibit J is confidential under former section 51.14(d) of the Family Code and must be withheld from disclosure in its entirety pursuant to section 552.101 of the Government Code.

Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Offense report no. 97-022811 in Exhibit K and the offense reports at issue in Exhibit L involve juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, offense report no. 97-022811 in Exhibit K and Exhibit L in its entirety are confidential pursuant to section 58.007(c) of the Family Code. You must withhold this information from disclosure under section 552.101 of the Government Code.

However, section 58.007 is inapplicable to offense report no. 98-048885 in Exhibit F and the remainder of Exhibit K because the incidents at issue do not involve a suspect or offender who is a "child" as defined by section 51.02 of the Family Code. A "child" is a person who is:

(A) ten years of age or older and under 17 years of age; or

(B) seventeen years of age or older and under 18 years of age who is alleged or 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). Section 58.007 does not apply where the information in question involves only a juvenile complainant or witness and not a juvenile suspect or offender. *See* Fam. Code § 51.04(a) (Title 3 covers cases involving delinquent conduct or conduct indicating need for supervision engaged in by child). Here, the individuals identified as suspects in the submitted documents were not juveniles at the time of the incidents. Therefore, the department may not withhold offense report no. 98-048885 contained in Exhibit F and the remainder of Exhibit K under section 58.007 of the Family Code.

Section 261.201 of the Family Code reads in part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We believe that a portion of the requested information consists of reports of alleged or suspected abuse or neglect and records used or developed in an investigation under chapter 261 of the Family Code. Because you have not cited any specific rule that the investigating agency has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, Exhibits M, N, O, and Q, and offense report nos. 99-002040 and 95-019025 contained in Exhibit P are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, you must not release Exhibits M, N, O, and Q, and offense report nos. 99-002040 and 95-019025 contained in Exhibit P to the requestor.

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). You state that the offense reports contained in Exhibits C and D relate to a pending criminal prosecution. Based upon this representation, we conclude that the release of Exhibits C and D would interfere with the detection, investigation, or prosecution of crime. *See 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) (court delineates law enforcement interests that are present in active cases).

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, we agree that the offense reports contained in Exhibit R and the remainder of Exhibit P pertain to cases that concluded in a result other than conviction or deferred adjudication. Therefore, section 552.108(a)(2) is applicable to Exhibit R and the remainder of Exhibit P.

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). Basic information, including a detailed description of the offense, must be released under section 552.108(c), whether or not this information is actually located on the front page of a police report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). However, in regard to Exhibit R, although you are required to release a detailed description of the offense, we have marked the types of information that are protected under common-law privacy and

must not be released as part of the description. *See* Gov't Code § 552.101; *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

In regard to the documents in Exhibit S, you raise section 550.065 of the Transportation Code. Section 550.065 provides in pertinent part:

(a) This section applies only to information that is held by [the Texas Department of Public Safety] or another governmental entity and relates to a motor vehicle accident reported under this chapter or Section 601.004 [of the Transportation Code].

(b) Except as provided by Subsection (c), the information is privileged and for confidential use of:

(1) the [Texas Department of Public Safety]; and

(2) an agency of the United States, this state, or a local government of this state that has use for the information for accident prevention purposes.

Transp. Code § 550.065(a)-(b). The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Texas Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.*

You indicate that the City of Lubbock no longer has the accident reports regarding the traffic accidents at issue. You claim, however, that because the submitted information would have been included in the accident reports, such information may not be subject to release under section 550.065 of the Transportation Code. We disagree. Initially, we note that as amended by the Seventy-fifth Legislature in section 13 of Senate Bill No. 1069, section 550.065(a) previously provided as follows:

(a) This section applies only to information that is held by the [Texas Department of Public Safety] or another governmental entity and relates to a motor vehicle accident, including:

(1) information reported under this chapter, Section 601.004, or Chapter 772, Health and Safety Code;

(2) information contained in a dispatch log, towing record, or a record of a 9-1-1 service provider; and

(3) the part of any other record that includes information relating to the date of the accident, the name of any person involved in the accident, or the specific location of the accident.

*See* Act of May 29, 1997, 75<sup>th</sup> Leg., R.S., ch. 1187, § 13, 1997 Tex. Gen. Laws 4575, 4582. The prior version of section 550.065 was held to be unconstitutional, however, and its enforcement was permanently enjoined. *See Texas Daily Newspaper Ass'n v. Cornyn*, No. 97-08930 (345th Dist. Ct., Travis County, Tex.) (Final Judgment and Permanent Injunction entered January 24, 2001). Among other things, the court concluded that the prior version of section 550.065 “impose[d] a wholesale ban on information that has traditionally been public[.]” *See id.* (Findings of Fact and Conclusions of Law entered January 24, 2001).

The Seventy-seventh Legislature enacted the present language of section 550.065(a) in House Bill No. 1544. *See* Act of May 25, 2001, 77<sup>th</sup> Leg., R.S., ch. 1032, § 5, 2001 Tex. Gen. Laws 2281, 2282. The legislative history of House Bill No. 1544 reflects that the legislature intended to correct the deficiencies that caused the court to invalidate the previous version of the statute. Hearings on Tex. H.B. 1544 before the Senate Committee on State Affairs, 77th Leg. R.S. (May 10, 2001); *see also* Open Records Decision No. 643 at 2 (1996) (citing *Acker v. Texas Water Comm'n*, 790 S.W.2d 299 (Tex. 1990)) (legislature is presumed to have enacted a statute with complete knowledge of and reference to existing law). Furthermore, there is no legislative indication that present section 550.065 was intended to encompass any records other than those prepared in accordance with chapter 550 or section 601.004 of the Transportation Code. Hearings on Tex. H.B. 1544; *see also* Open Records Decision No. 643 at 2-3 (citing *Buckner Glass & Mirror, Inc. v. T.A. Pritchard Co.*, 697 S.W.2d 712 (Tex. App.--Corpus Christi 1985, no writ) (when legislature amends a law, it is presumed to have intended to change the law). The documents in Exhibit S were not prepared in accordance with chapter 550 or section 601.004 of the Transportation Code. Accordingly, we conclude that the documents in Exhibit S are not governed by section 550.065.

However, in regard to Exhibit S, offense report no. 98-048885 of Exhibit F, and offense report no. 99-050630 of Exhibit K, section 552.130(a) of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Thus, you must withhold the Texas drivers' licenses, license plate numbers, and motor vehicle information we have marked pursuant to section 552.130 of the Government Code.

Further, offense report no. 98-048885 of Exhibit F and offense report no. 99-050630 of Exhibit K contain social security numbers that may be excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the 1990

amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if they were obtained or are maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. See Open Records Decision No. 622 (1994). It is not apparent to us that the social security numbers contained in the reports at issue were obtained or are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain social security numbers. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are, therefore, confidential under section 405(c)(2)(C)(vii)(I). We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number, the department should ensure that these numbers were not obtained or are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In summary, we conclude that: 1) to the extent information exists where the named, non-deceased individual is a possible suspect, arrestee, or defendant, you must withhold this information under common-law privacy as encompassed by section 552.101; 2) Exhibit J is confidential under former section 51.14(d) of the Family Code and must be withheld from disclosure in its entirety pursuant to section 552.101; 3) offense report no. 97-022811 in Exhibit K and Exhibit L in its entirety are confidential pursuant to section 58.007(c) of the Family Code and must be withheld from disclosure under section 552.101; 4) Exhibits M, N, O, and Q, and offense report nos. 99-002040 and 95-019025 contained in Exhibit P are confidential pursuant to section 261.201 of the Family Code and must be withheld from disclosure under section 552.101; 5) with the exception of basic front page offense and arrest information, you may withhold Exhibits C, D, and R, and the remainder of Exhibit P under section 552.108; 6) you must withhold the Texas drivers' licenses, license plate numbers, and motor vehicle information we have marked in offense report no. 98-048885 of Exhibit F, offense report no. 99-050630 of Exhibit K, and Exhibit S pursuant to section 552.130; and 7) offense report no. 98-048885 of Exhibit F and offense report no. 99-050630 of Exhibit K contain social security numbers that may be excepted from disclosure under section 552.101 in conjunction with federal law. All remaining information must be released.

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,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/sdk

Ref: ID# 170632

Enc: Submitted documents

c: Ms. Lena Roberts  
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(w/o enclosures)