



October 18, 2002

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

OR2002-5910

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# 170880.

The Lubbock Police Department (the “department”) received a request for information regarding a named individual. 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.

Section 552.101 of the Government Code 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. When a law enforcement agency is asked to compile a particular individual’s criminal history information, the compiled information takes on a character that implicates the individual’s right to privacy in a manner that the same information in an uncompiled state does not. See *United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); see also Open Records Decision No. 616 at 2-3 (1993). In this instance, the

requestor asks for department records, including arrest records and offense reports, that relate to a named individual. In this case, we believe that this individual's right to privacy has been implicated. Thus, to the extent the department maintains records that depict the named individual as a possible suspect, arrestee, or defendant, we determine that such information is confidential under common-law privacy as encompassed by section 552.101 of the Government Code and must be withheld. *See id.*

Next, you argue that Exhibit F and Exhibit G are excepted from disclosure under 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. 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. With respect to Exhibit F, you state, and the documents reflect, that the offense reports in Exhibit F pertain to cases that concluded in a final result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to Exhibit F. Exhibit G pertains to a homicide investigation that concluded in the conviction of one suspect for murder. You inform us, and the documents reflect, that two additional suspects were arrested but not prosecuted for attempted murder. Thus, with respect to these two individuals, we determine that Exhibit G relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. Accordingly, we agree that section 552.108(a)(2) applies to Exhibit G.

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). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic front page offense and arrest information, the department may withhold Exhibit F and Exhibit G from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information in Exhibit F and Exhibit G that is not otherwise confidential by law. Gov't Code § 552.007.

You contend that the documents in Exhibit H are excepted from disclosure under section 552.101 in conjunction with 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.

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, 75th 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, 77th 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 H were not prepared in accordance with chapter 550 or section 601.004 of the Transportation Code. Accordingly, we determine that the documents in Exhibit H may not be withheld pursuant to section 550.065 of the Transportation Code.

The submitted records include Texas driver’s license numbers and motor vehicle license plate numbers. Section 552.130 of the Government Code provides for the confidentiality of Texas motor vehicle license and registration information. The department must withhold the information we have marked pursuant to section 552.130.

We also note that social security numbers may be confidential under federal law. A social security number may be withheld in some circumstances 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 number and related records that are obtained or 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 numbers are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the 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.

In summary, to the extent department records depict the named individual at issue as a suspect, arrestee, or defendant, the department must withhold such records pursuant to section 552.101 of the Government Code and *Reporters Committee*. With the exception of

basic information, the department may withhold Exhibit F and Exhibit G under section 552.108(a)(2) of the Government Code. Texas driver's license and motor vehicle information must be withheld under section 552.130 of the Government Code. Social security numbers may be confidential under section 552.101 and federal law. The remainder of the information at issue 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,

A handwritten signature in black ink, appearing to read 'DRS', with a long horizontal flourish extending to the right.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 170880

Enc: Submitted documents

c: Ms. Lena Roberts
915 Texas Avenue
Lubbock, Texas 79401
(w/o enclosures)