



November 6, 2002

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2002-6335

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171846.

The Mesquite Police Department (the "department") received a request for certain police records relating to a specific address for a specific time period. Although you state that the department will release some of the requested records, you claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201(a) of the Family Code provides 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, and working papers used or developed in

an investigation under this chapter or in providing services as a result of an investigation.

The documents in tab 2 relate to allegations of child abuse and neglect. You state that the department has not adopted a rule that governs the release of this type of information. Therefore, we conclude that tab 2 is confidential pursuant to section 261.201 of the Family Code and must, therefore, be withheld in its entirety under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).

Section 552.101 also encompasses the doctrine of common-law privacy. 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). Based on your representations and our review of the highlighted information in tab 3, we agree that this information implicates an individual's right to privacy. Thus, you must withhold this information under common-law privacy in conjunction with the holding in *Reporters Committee*.

You also argue that certain highlighted information in tab 3 is protected from disclosure under section 552.117(2). Section 552.117(2) of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of a peace officer, as well as information revealing whether the officer has family members. We note, however, that the protections of section 552.117 only apply to information that the governmental body holds in its capacity as an employer. *See* Gov't Code § 552.117 (providing that employees of governmental entities may protect certain personal information in the hands of their employer); *see also* Gov't Code § 552.024 (establishing election process for Gov't Code § 552.117). In this instance, the submitted offense report is held by the department as a law enforcement entity, not an employer. Consequently, we find that the none of the officer's personal information may be withheld under section 552.117(2).

We note, however, that the officer's home address, home telephone number, and social security number may be protected by section 552.1175 of the Government Code. Section 552.1175 states in pertinent part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

We have marked the information in the submitted offense report that is subject to section 552.1175. Thus, if the peace officer elects to restrict access to this information in accordance with this provision, we conclude that the department must withhold the address, telephone number, and social security number under section 552.1175. Since the remaining information you have marked does not reveal the officer's address, we conclude that it must be released.

You also contend that some of the highlighted information in tab 3 is excepted from disclosure under section 552.130. 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[.]

Gov't Code § 552.130. Thus, we agree that you must withhold any Texas driver's license numbers and license plate numbers found in the submitted documents.

Finally, you seek to withhold an individual's social security number from disclosure. We note that 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 documents is confidential under section 405(c)(2)(C)(viii)(I), and, therefore, excepted from public disclosure under section 552.101 of the Government Code on the basis of that federal provision. We caution, however, that section 552.353 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, you should ensure that it was not obtained or maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In summary, you must withhold tab 2 under section 552.101 in conjunction with section 261.201 of the Family Code. You must withhold the highlighted criminal history record information under section 552.101. An officer's home address, telephone number, and social security number may be protected by section 552.1175. Texas driver's license numbers and license plate numbers must be withheld under section 552.130. The individual's social security number may be protected by federal law. The remaining information, however, 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

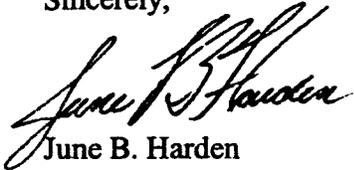
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 171846

Enc: Submitted documents

c: Ms. Brenda Williams
2204 South Parkway
Mesquite, Texas 75149
(w/o enclosures)