



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

January 2, 2003

Mr. Sim W. Goodall
Police Legal Advisor
Arlington Police Department
P. O. Box 1065
Arlington, Texas 76004-1065

OR2003-0009

Dear Mr. Goodall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173698.

The Arlington Police Department (the "department") received a request for copies of "offenses, arrest reports, citations, and police calls for service, during the period of, January 1, 2002, to September 24, 2002" and "URBAN RENEWAL AND OR DEVELOPMENT GRANTS" ("grants") regarding two specified business entities and the one-thousand foot area surrounding each business entity. You state that responsive information does not exist and may not exist for the requested grants and for some of the requested calls for service.¹ You claim, however, that portions of the remaining requested information may be excepted from disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).²

¹ We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

² We note that the requestor in this instance argues that the department failed to comply with section 552.301 of the Government Code in making its request for a decision to us by not notifying him that it wished to withhold portions of the requested information from disclosure. The information submitted to this office by the department in reference to this request included a letter dated October 8, 2002 that was copied to the requestor which indicated that the department wished to withhold portions of the remaining requested information based on enumerated exceptions to disclosure. In the open records ruling process, this office is unable to resolve disputes of fact. We accordingly rely upon the representations presented by the department

Initially, we note that the submitted information includes several "Texas Peace Officer's Accident Reports," which are subject to chapter 550 of the Transportation Code. Section 550.065(b) provides that, except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the 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. *See* Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety (the "DPS") 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. *See id.* In this case, we find that the requestor has not provided the department with any of the three pieces of information required under section 550.065(c)(4). Accordingly, we conclude that the department must withhold the accident reports that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 550.065(c)(4) of the Transportation Code.

You claim that portions of the submitted information may be excepted from disclosure pursuant to section 552.101 in conjunction with chapter 772 of the Health and Safety Code.³ We note that chapter 772 authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable only to an emergency 911 district established in accordance with chapter 772. *See* Open Records Decision No. 649 at 1-3 (1996). Section 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 911 telephone numbers and addresses. *See* Health & Safety Code § 772.401, *et seq.* These particular sections make confidential the originating telephone number and address of a 911 caller that are furnished by a service supplier. *See* Open Records Decision No. 649 at 2 (1996). We also note, however, that these sections are only applicable to originating telephone numbers and addresses obtained by a

which show that the department complied with section 552.301 of the Government Code in properly and timely notifying the requestor of its request for decision from our office.

³ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

911 district's use of a service supplier's database. *See* Open Records Decision No. 649 at 2 (1996).

After carefully reviewing your arguments and the information at issue, we find that none of the originating addresses and telephone numbers that may be contained within this information were obtained by a 911 district's use of a service supplier's database. Accordingly, we conclude that the department may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety Code. *See id.* at 3 (language of confidentiality provision controls scope of its protection); *see also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality must be express and confidentiality requirement will not be implied from statutory structure).

You also claim that portions of the submitted information may be excepted from disclosure pursuant to section 552.101 in conjunction with section 1702.284 of the Occupation Code. Section 1702.284 governs information contained within alarm systems records and provides:

Information contained in alarm systems records maintained by a governmental body that concerns the location of an alarm system, the name of the occupant of an alarm system location, or the type of alarm system used is confidential and may be disclosed only to the board or as otherwise required by state law or court order.

Occ. Code § 1702.284. Portions of the submitted information reveal the location of an alarm system, the name of the occupant of an alarm system location, and the type of alarm system used. Accordingly, we conclude that the department must withhold this information pursuant to section 552.101 of the Government Code in conjunction with section 1702.284 of the Occupation Code. We have marked a representative sample of this type of information for your review.

You also claim that portions of the submitted information may be excepted from disclosure pursuant to section 552.101 in conjunction with section 58.007 of the Family Code. We note that juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007 states in pertinent part:

(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.

Fam. Code § 58.007(c). Portions of the submitted information, which we have marked, concern law enforcement records and files pertaining to juvenile conduct that occurred after September 1, 1997.⁴ It appears that none of the exceptions in section 58.007 apply to this marked information. Accordingly, we conclude that the department must withhold this marked information pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

We also note that portions of the submitted information are excepted from disclosure pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201 provides in part:

- (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

⁴ A "child" is defined in the Family Code as a person who is ten years of age or older and under seventeen years of age. See Fam. Code § 51.02(2)(a).

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

Fam. Code § 261.201(a). Portions of the submitted information, which we have marked, concern reports of alleged or suspected abuse made under chapter 261 and working papers used or developed in an investigation under chapter 261 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. We, therefore, assume that no such regulation exists. Given that assumption, we conclude that the department must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (applying predecessor statute).

You also claim that portions of the submitted information may be excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108 provides in pertinent part that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 as an exception to disclosure of requested information must demonstrate, 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 or prosecution. *See* Gov't Code §§ 552.108(a), (b), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that some of the submitted records relate to pending criminal cases. You note which of the submitted records relate to pending criminal cases by marking them as being either "pending," "case filed," "active," or "deferred adjudication." Based on our review of your representations and the information at issue, we find that the release of some records, which we have marked, "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a).

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public). Accordingly, with the exception of basic information that must be released to the requestor, we conclude that the department may withhold the information that we have marked pursuant to section 552.108(a)(1) of the Government Code.

We note that social security numbers that are contained within the submitted information may be excepted from disclosure pursuant to section 552.101 in conjunction with federal law. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers 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* Open Records Decision No. 622 (1994). The department has cited any law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain these social security numbers. Therefore, we have no basis for concluding that they are confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. 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 these social security numbers, the department should ensure that they were not obtained or are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. We note, however, that the right of privacy is purely personal and lapses at death. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976). Accordingly, the department may not withhold the social security number of any deceased individual noted in the submitted information under section 552.101 of the Government Code in conjunction with federal law, regardless of the applicability of a law enacted on or after October 1, 1999 that authorizes it to obtain or maintain social security numbers.

You also claim that portions of the submitted information may be excepted from disclosure pursuant to section 552.101 in conjunction with the constitutional and common-law rights to privacy. Section 552.101 also encompasses information that is protected from disclosure under the constitutional and common-law rights to privacy. We note that common-law privacy protects information from disclosure if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information 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. *See id.* at 683. Furthermore, this office has found that some kinds of medical information constitute highly intimate or embarrassing information that must be withheld from disclosure under the common-law right to privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). In addition, 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). Finally, we note that 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).

We have marked information within the submitted documents the release of which would implicate the common-law privacy interests of particular individuals noted in the submitted records, to include identifying information of sexual assault victims. We have also marked a representative sample of compiled criminal history record information the release of which would implicate the privacy interests of individuals in accordance with the reasoning set out in *Reporters Committee*. Accordingly, we conclude that the department must withhold such information throughout the submitted documents pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

We note that constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. See Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. See *id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. See *id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After carefully reviewing the submitted information, we find that no portion of this information is confidential under the constitutional right to privacy. Accordingly, we conclude that the department may not withhold any portion of the submitted information pursuant to section 552.101 of the Government Code in conjunction with the constitutional right to privacy.

You finally claim that portions of the submitted information may be excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure 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. See Gov't Code § 552.130. We have marked a representative sample

of the types of information that are subject to section 552.130. Accordingly, we conclude that the department must withhold such information throughout the submitted documents pursuant to section 552.130. We note, however, that a deceased individual's section 552.130 information may not be withheld under section 552.130 of the Government Code since the right to privacy is purely personal and lapses at death. *See Moore*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.).

Finally, we note that portions of the submitted information are excepted from disclosure pursuant to section 552.136 of the Government Code. Section 552.136 makes certain access device numbers confidential and provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. Accordingly, we conclude that the department must withhold the access device numbers that we have marked pursuant to section 552.136 of the Government Code.

In summary, the department must withhold the accident reports that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 550.065(c)(4) of the Transportation Code. The department must withhold all information subject to section 1702.284 of the Occupation Code that is contained in all alarm system records pursuant to section 552.101 of the Government Code, a representative sample of which we have marked for your review. The department must withhold the information that we have marked pursuant to section 552.101 in conjunction with section 58.007 of the Family Code. The department must withhold the information that we have marked pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. With the

exception of basic information that must be released to the requestor, the department may withhold the information that we have marked pursuant to section 552.108(a)(1) of the Government Code. Social security numbers of living individuals that are contained within the submitted information may be excepted from disclosure pursuant to section 552.101 in conjunction with federal law. The department must withhold the information that we have marked pursuant to section 552.101 in conjunction with the common-law right to privacy, to include all compiled criminal history record information that is contained throughout the submitted documents, a representative sample of which we have marked for your review. The department must withhold all section 552.130 information of living individuals that is contained throughout the submitted documents, a representative sample of which we have marked for your review. The department must withhold the access device numbers that we have marked pursuant to section 552.136 of the Government Code. The department must release the remaining submitted information 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).

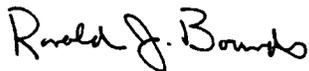
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 173698

Enc. Marked documents

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