



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

January 13, 2003

Mr. G. Chadwick Weaver
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2003-0258

Dear Mr. Weaver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174899.

The City of Midland (the "city") received a request for police records relating to a named individual or to a specified address. You claim that 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. 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, we do not believe that the submitted information is a compilation of criminal history information as contemplated by *Reporters Committee*. Therefore, we conclude the city may not withhold any of the requested information under section 552.101 and *Reporters Committee*.

You next argue that Exhibit D contains information excepted from disclosure under section 552.101 of the Government Code in conjunction with section 772.318(c) of the Health and Safety Code.¹ Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. See Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 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. Health & Safety Code § 772.401, *et seq.* Thus, if the emergency communication district here is subject to section 772.118, 772.218 or 772.318, the callers' addresses and phone numbers are excepted from public disclosure based on section 552.101 as information deemed confidential by statute. If, on the other hand, the emergency communication district here is not subject to section 772.118, 772.218 or 772.318, the callers' addresses and phone numbers are not protected under section 552.101 and must therefore be released.

Next, you assert that Exhibits B and C are excepted from disclosure under section 552.108(a)(2). 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. You state that the incident "did not result in a conviction or deferred adjudication" and that the "investigation has concluded and the case is closed." Therefore, we agree that section 552.108(a)(2) is applicable to Exhibits B and C.

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 a detailed description of the offense. Open Records Decision No. 127 at 4 (1976).

We note that some of the basic information in Exhibit B includes private information. See *Industrial Found.*, 540 S.W.2d 668 (Tex. 1976); Open Records Decision Nos. 393 (1983), 339 (1982). You must withhold this information, which we have marked, under section

¹Section 552.101 encompasses information protected by other statutes

552.101 in conjunction with the common-law right to privacy.² Thus, with the exception of the basic front page offense and arrest information, including private information which we have marked under section 552.101, the city may withhold Exhibits B and C 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 Exhibits B and C that is not otherwise confidential by law. Gov't Code § 552.007.

You next claim that portions of the information submitted in Exhibits E and F are excepted from disclosure under section 552.130. Section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, the city must withhold from disclosure the motor vehicle information we have marked pursuant to section 552.130.

Finally, we note that portions of Exhibits E and F contain information made confidential under section 552.136. Section 552.136 provides as follows:

(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. We have marked the information that the city must withhold under section 552.136. As we decide this issue under section 552.136, we do not address your assertions under section 552.101 with respect to the account numbers.

In summary, the city must withhold from disclosure the submitted telephone numbers and addresses in Exhibit D to the extent the emergency communication district at issue is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code. Except for basic information, the city may withhold Exhibits B and C from disclosure based on section 552.108(a)(2) of the Government Code, with the following caveat. The city must withhold

²Section 552.101 encompasses common-law privacy. *Industrial Foundation* at 685.

the information we have marked in Exhibit B under section 552.101 in conjunction with common-law privacy. The city must withhold the motor vehicle information in Exhibits E and F under section 552.130. Finally, the city must withhold the information we have marked in Exhibits E and F under section 552.136. The city must release the remaining 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 174899

Enc: Submitted documents

c: Mr. Brian Carney
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(w/o enclosures)