



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 26, 2003

Lt. Wyman Hopkins
City of Rosenberg
2120 Fourth Street
Rosenberg, Texas 77471

OR2003-2052

Dear Lt. Hopkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178445.

The Rosenberg Police Department (the "department") received a request for "records for the last 6 years on [a specified] address and on [the requestor and another named individual] for 1996 to now." You state that you have released some information to the requestor but claim that other 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." This section encompasses the common law right of privacy, which excepts from disclosure information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). 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 the department to compile all information concerning herself and another named individual during a specified time period. To the extent the requestor asks the department to compile information about the other individual, that person's right to privacy is implicated. Thus, if the department has any records in which the other named individual is portrayed as a suspect, defendant, or arrestee, the department must withhold such information under common law privacy as encompassed by section 552.101 of the Government Code. *See id.* We note, however, that the requestor has a special right of access to a compilation of her own criminal history, to the extent that it exists. *See Gov't Code § 552.023(b)* (governmental body may not deny access to person to whom information relates on grounds that information is considered confidential by privacy principles).

We now address the information that you submitted in which neither the requestor nor the other named individual is portrayed as a suspect, defendant, or arrestee. This information includes social security numbers. Section 552.101 also encompasses information made confidential by other statutes. 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 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* Open Records Decision No. 622 (1994). In this instance, 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 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security numbers, the department should ensure that it did not obtain or maintain them pursuant to any provision of law enacted on or after October 1, 1990. However, because the laws regarding the confidentiality of social security numbers are intended to protect individuals' privacy, the requestor has a special right of access to her own social security number. *See* Gov't Code § 552.023(b).

The submitted records also include Texas driver's license numbers. Section 552.130 excepts from disclosure information relating to "a motor vehicle operator's or driver's license or permit issued by an agency of this state." The exception in section 552.130 is based on privacy principles. Therefore, the requestor is entitled to her own driver's license number. *See* Gov't Code § 552.023(b). However, the Texas driver's license numbers of other individuals must be withheld pursuant to section 552.130. We have marked this information.

In summary, to the extent they exist, the department must withhold any records in which the other named individual is portrayed as a suspect, defendant, or arrestee. Social security numbers of individuals other than the requestor must be withheld from the requestor if the numbers were obtained or maintained pursuant to a law enacted on or after October 1, 1990. We have marked driver's license numbers that must also be withheld. All other information must be released.¹

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.

¹As our ruling on these issues is dispositive, we need not address your arguments regarding section 552.108.

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).

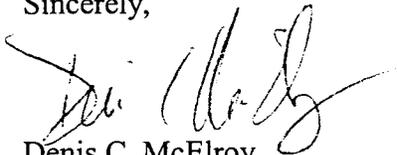
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 178445

Enc. Submitted documents

c: Ms. Mary C. Rodriguez
1507 Helmsley Drive
Rosenberg, Texas 77471
(w/o enclosures)