



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

April 11, 2003

Ms. Tenley Aldredge  
Assistant County Attorney  
Travis County Attorney  
P.O. Box 1748  
Austin, Texas 78767

OR2003-2455

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179249.

The Travis County Sheriff's Office (the "sheriff") received a request for "all open files" for incidents related to a particular individual. You advise that you have released some of the requested information. You claim that portions of the remaining requested information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Social security numbers of living individuals contained within the information 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 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 numbers at issue are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act (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 numbers, you should ensure that they were not obtained or are not maintained by the sheriff pursuant to any provision of law enacted on or after October 1, 1990. We note that you may not withhold the social security number of a deceased person. *See Moore v.*

*Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.–Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) (protection afforded by provision enacted to protect the privacy of an individual extinguishes upon the individual's death).

Section 552.101 also encompasses information protected by the common-law right of 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 Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information 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. 540 S.W.2d at 685. The types 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. *Id.* at 683. This office has also found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information, or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and personal financial information pertaining to voluntary financial decisions and financial transactions that do not involve public funds, *see* Open Records Decision Nos. 600 (1992), 545 (1990).

You acknowledge that the privacy rights of an individual lapse upon death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d at 491; *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. at 146-47 (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded”) (quoting Restatement of Torts 2d). Thus, the sheriff may not withhold any information relating solely to a deceased individual in the submitted reports under section 552.101 in conjunction with common-law privacy. *See generally* Attorney General Opinion H-917 at 3-4 (1976); *see also* Open Records Decision No. 272 at 1 (1981).

However, you claim that some of the information implicates the privacy rights of the family of the deceased individual. If the release of information about a deceased person reveals highly intimate or embarrassing information about living persons, the information must be withheld under common-law privacy. *See Moore*, 589 S.W.2d at 491 (right of privacy belongs to “person about whom” facts have been published); *see also* Attorney General Opinion JM-229. We have reviewed the submitted information to determine whether it contains facts or information about others whose privacy may be implicated. We find that it does not contain any factual information pertaining to the deceased's family that is highly intimate or embarrassing. Further, we note that this office has previously concluded that information concerning domestic violence generally does not come within the scope of

common-law privacy. Open Records Decision No. 611 (1992) (“An assault by one family member on another is a crime, not a family matter normally considered private”).

However, we note that where an individual’s criminal history information has been compiled by a governmental entity, 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). Based on the reasoning set out in *Reporters Committee*, such a compilation implicates an individual’s right to privacy to the extent that it includes arrests and investigations where the individual is a suspect, arrestee, or defendant in a case. Accordingly, we conclude that to the extent that the sheriff maintains responsive criminal history information that reveals that an individual is a suspect, arrestee, or defendant in a case, such information must be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

Finally, the submitted documents contain information that is excepted from disclosure under section 552.130. Section 552.130 excepts from disclosure information relating to a driver’s license or motor vehicle title or registration issued by an agency of this state. The driver’s license, license plate, and vehicle identification numbers of living individuals must therefore be withheld under section 552.130. Because this provision was enacted to protect the privacy of an individual, its protection extinguishes upon the individual’s death. *See Moore*, 589 S.W.2d at 491; *see also Justice*, 472 F. Supp. at 146-47. Thus, the sheriff may not withhold the deceased individual’s driver’s license or motor vehicle information.

In summary, social security numbers of living individuals may be confidential under the federal Social Security Act. To the extent that the sheriff maintains criminal history information revealing that an individual is a suspect, arrestee, or defendant in a case, such information must be withheld under section 552.101 in accordance with the holding in *Reporters Committee*. The driver’s license and motor vehicle information of living individuals must be withheld under section 552.130. The remaining submitted information 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 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,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/lmt

Ref: ID# 179249

Enc. Submitted documents

c: Mr. Will Green  
C/O Tenley Aldredge  
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(w/o enclosures)