



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

June 10, 2003

Mr. Russell W. Malm  
County Attorney  
Midland County  
200 West Wall Street, Suite 104  
Midland, Texas 79701

OR2003-3979

Dear Mr. Malm:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 182516.

The Midland County Sheriff's Department (the "Department") received a request for the following five categories of information:

1. Police report filed with the [Department] by [a named individual] on or about January 17, 2002.
2. Arrest warrant for [a named individual] for terroristic threats on or about January 15, 2002.
3. Any criminal records on [a named individual].
4. Any family violence records on [a named individual].
5. Personnel file, disciplinary action and family violence notices on [a named individual] . . . for [a specified period of time].

You state the Department has no information responsive to the fifth category of information. You assert the submitted responsive information is excepted from disclosure under

sections 552.101 and 552.108 of the Government Code. We have reviewed the information you submitted and we have considered the exceptions you claim.

Initially, we address the Department's obligations under section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). In this case, you inform us that the Department cannot attest with any certainty the exact date it received the request for information. The Department explains the letter from the requestor to the Department has a postmark date of March 18, 2003; therefore, you assume the Department received the request on March 19, 2003 at the earliest. Accordingly, you should have submitted your request for an attorney general opinion no later than April 2, 2003. Your letter requesting an opinion from our office has a postmark dated April 3, 2003. Thus, we find that you did not request a ruling from this office within the prescribed period. *See* Gov't Code § 552.301(b) (requiring governmental body to ask for the attorney general's decision no later than the tenth business day after the date of receiving the written request). Consequently, we conclude the Department failed to comply with 552.301(b) by submitting an untimely request for a decision from this office.

According to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest exists when some other source of law makes the information confidential or the information impacts third party interests. Open Records Decision No. 150 at 2 (1977). You assert section 552.108 of the Government Code, a discretionary exception under the Act, which generally does not qualify as a compelling reason to withhold information from the public. *See* Open Records Decision No. 586 (1991) (providing that a governmental body

may waive section 552.108 of the Government Code). However, as section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address your arguments under this provision despite your failure to comply with section 552.301(b).

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 provision encompasses the doctrine of common-law privacy. Common-law privacy protects information when (1) it contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the information. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a governmental entity compiles criminal history information pertaining to a particular individual, the compiled information takes on a character that implicates the individual’s right of 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). In this instance, by requesting “any criminal records” and “any family violence records” pertaining to a named individual, we believe the requestor has asked the Department to compile criminal history information, thereby implicating the individual’s right to privacy to the extent the individual is identified as suspect, arrestee, or defendant. *See id.* Thus, to the extent the Department maintains information responsive to categories three and four, it must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy and *Reporters Committee*.

As information responsive to categories one and two does not implicate the doctrine of common-law privacy, we will address other relevant issues. First, the requestor seeks a specific arrest warrant governed by section 552.022 of the Government Code. The information at issue indicates it has been filed with a court. Section 552.022(a)(17) makes court records expressly public. *See* Gov’t Code § 552.022(a)(17) (providing for required public disclosure of information that also is a matter of public court record); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, the Department must release the arrest warrant to the requestor as required by section 552.022(a)(17) of the Government Code.

Next, we note the applicability of section 552.130 of the Government Code to information responsive to category one. Section 552.130 excepts from public disclosure information relating to a driver’s license or a motor vehicle title or registration issued by an agency of this state. *See* Gov’t Code § 552.130. In this case, the information subject to release contains a license plate number, a driver’s license number, and a vehicle identification number. Therefore, the Department must withhold the information we have marked that pertains to motor vehicle records under section 552.130 of the Government Code.

Last, we note the information responsive to category one contains social security numbers that may be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 of the Government Code 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 in the responsive records are confidential under section 405(c)(2)(C)(viii)(I), and therefore, excepted from public disclosure under section 552.101 of the Government Code and the referenced federal provision. However, we caution the Department that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number, you should ensure that no such information was obtained or is maintained by the Department pursuant to any provision of law enacted on or after October 1, 1990.

In summary, to the extent it exists, the Department must withhold information responsive to categories three and four of the request under section 552.101 of the Government Code and common-law privacy. The Department must release the arrest warrant responsive to category two of the request. The Department must release the remainder of the information we have with the following redactions: 1) information pertaining to motor vehicle records, which we have marked, under section 552.130 of the Government Code and 2) if applicable, the social security numbers we have marked under section 552.101 in conjunction with federal law.

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

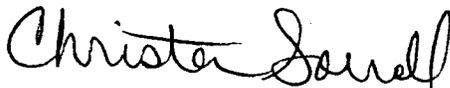
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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,



Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 182516

Enc: Submitted documents

c: Mr. James Scherr  
Scherr Legate & Erlich, P.L.L.C.  
109 North Oregon, 12<sup>th</sup> Floor  
El Paso, Texas 79901  
(w/o enclosures)