



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

July 22, 2003

Mr. Ken Johnson  
Assistant City Attorney  
City of Waco - Legal Services  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2003-5030

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184652.

The City of Waco Police Department (the "department") received a request for "all calls, reports, incidents[,] and offenses occurring at" four listed addresses from November 1, 1989 to the present involving three named individuals. 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 exception 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." Under *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), where an individual's criminal history information has been compiled or summarized by a governmental entity, the information takes on a character that implicates the individual's right of privacy in a manner that the same individual records in an uncompiled state do not. Thus, when a requestor asks for unspecified information concerning a certain named individual and that individual is a possible suspect, arrestee, or defendant, a law enforcement agency must withhold this information under section 552.101 because that individual's privacy right has been implicated. *See id.* In this instance, we believe that the named individuals' privacy rights have been implicated by the request. Thus, any records in which any of the named individuals are identified as a suspect, arrestee, or offender must be withheld under section 552.101 of the Government Code and *Reporters Committee*.

You argue that the reports in Exhibits 4 and 5 contain information that is confidential under section 552.101 of the Government Code and common-law privacy. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects

information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. 540 S.W.2d at 683.

This office has 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), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982), and references in emergency medical records to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress, *see* Open Records Decision No. 343 at 1-2 (1982). Upon review of Exhibits 4 and 5, we agree that portions of them are highly intimate and embarrassing and of no legitimate public concern. We also note that we have marked portions of Exhibit 6 that contain confidential information for purposes of section 552.101 and common-law privacy. However, the remainder of the information is either not the type of information considered highly intimate or embarrassing for purposes of common-law privacy or is of legitimate public concern. Therefore, the department must withhold the information we have marked under section 552.101 and common-law privacy.

Additionally, Exhibit 5 contains information that is confidential under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas license plate numbers and vehicle identification number you have marked, as well as the information we have marked, under section 552.130.

Finally, you argue that the information in Exhibit 6 is confidential under section 552.101 in conjunction with section 772.218 of the Health and Safety Code. This section encompasses

information protected by other statutes. 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. To the extent that the submitted information contains originating addresses that were provided to a 9-1-1 service by a service supplier and the 9-1-1 service is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code, the originating addresses of the 9-1-1 callers must be withheld from disclosure under section 552.101 of the Government Code as information deemed confidential by statute. However, if the addresses are not originating addresses, or if they were not provided to the 9-1-1 service by a service supplier, or if the 9-1-1 service is not subject to section 772.118, 772.218, or 772.318, the addresses must be released.

In summary, you must withhold any records in which any of the named individuals are identified as a suspect, arrestee, or offender under section 552.101 of the Government Code and *Reporters Committee*. You must withhold the portions of Exhibits 4, 5, and 6 that we have marked under section 552.101 and common-law privacy. You must withhold the information you have marked, as well as the information we have marked, under section 552.130 of the Government Code. You 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 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,



Jennifer E. Berry  
Assistant Attorney General  
Open Records Division

JEB/seg

Ref: ID# 184652

Enc: Submitted documents

c: Mr. Ben R. Hubenak  
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Waco, Texas 76710  
(w/o enclosures)