



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 22, 2003

Mr. Miles K. Risley  
Senior Assistant City Attorney  
City of Victoria  
P.O. Box 1758  
Victoria, Texas 77902-1758

OR2003-6648

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188004.

The City of Victoria (the "city") received two requests from the same requestor for information relating to a named individual. We note that one of the requests was directed to the Victoria Police Department, and the other request was directed to the Victoria Municipal Court. You state that all of the records at issue are records of the Victoria Police Department. You claim that the information at issue is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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," and encompasses the doctrine of common-law privacy. Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and that is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

In this instance, the requestor specifically asks for "any and all documents" pertaining to a named individual. We find that this request, in essence, requires the city to compile the criminal history of the named individual. 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 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, 780 (1989) (“[A] third party’s request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen’s privacy.”)<sup>1</sup> Here, because the requestor asks for all information concerning a certain person, the requests implicate that person’s right to privacy. Thus, to the extent the city maintains law enforcement records depicting the individual at issue as a possible suspect, arrestee, or criminal defendant, we determine that the city must withhold such information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. *See id;* cf. Gov’t Code § 411.082(2) (definition of criminal history record information does not include driving record information).

We note that the records you have submitted pertaining to case numbers 0011600, 9908127, and 9305313 make reference to the named individual as a complainant, rather than as a suspect, arrestee, or criminal defendant. Furthermore, the submitted police records pertaining to case number 0016747 concern an abandoned vehicle and do not make reference to the individual at issue as a suspect, arrestee, or defendant in relation to a criminal offense. These records are not part of a compilation of the individual’s criminal history. Thus, the submitted information pertaining to case numbers 0016747, 0011600, 9908127, and 9305313 is not excepted from disclosure pursuant to section 552.101 and *Reporters Committee*.

Next, this office has found that information that reflects an individual’s personal financial decisions and is not related to a financial transaction between the individual and a governmental body is generally excepted from disclosure under common-law privacy. *See Open Records Decision Nos. 600 (1992), 545 (1990)* (information relating to individual’s bills and credit history protected under common-law privacy). One of the submitted documents contains a small amount of personal financial information that is protected from disclosure under common-law privacy. The city must withhold this information, which we have marked, pursuant to section 552.101 of the Government Code.

We note that some of the submitted records that are not protected by common-law privacy contain information that is excepted from disclosure under section 552.130 of the Government Code, which excepts information relating to “a motor vehicle operator’s or driver’s license [or] a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1), (2). We have marked Texas driver’s license and motor vehicle title or registration information that the city must withhold pursuant to section 552.130.

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<sup>1</sup>Please note that the privacy interest in criminal history record information has long been recognized by Texas courts and in open records decisions issued by this office. *See, e.g., Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 188 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (release of individual’s criminal history record compiled by city police department implicates privacy interests of individual) (construing statutory predecessor to section 552.101); *Open Records Decision Nos. 616 (1993), 565 (1990), 354 (1982), 252 (1980), 216 (1978), 183 (1978), 144 (1977), 127 (1977)*.

Finally, the submitted records contain a social security number that may be confidential under federal law. A social security number may be excepted from disclosure 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 or 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 number in case number 9305313 is 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 Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

In summary, to the extent the city maintains law enforcement records that depict the named individual at issue as a possible suspect, arrestee, or criminal defendant, such information is protected by common-law privacy and must be withheld pursuant to section 552.101 of the Government Code and the decision in *Reporters Committee*. We have marked personal financial information that must be withheld under section 552.101 in conjunction with common-law privacy. We have marked information that the city must withhold under section 552.130 of the Government Code. A social security number may be excepted under section 552.101 in conjunction with federal law. The remainder of the information at issue must be released 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,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 188004

Enc: Submitted documents

c: Mr. Homer Escalante  
2105 Walnut Avenue  
Victoria, Texas 77901  
(w/o enclosures)