



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 19, 2004

Mr. John D. Lestock
Assistant City Attorney
City of Paris
P.O. Box 9037
Paris, Texas 75461-9037

OR2004-2112

Dear Mr. Lestock:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197794.

The Paris Police Department (the "department") received a request for all department records relating to a named individual. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.352 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted documents include an arrest warrant. The 78th Legislature recently amended article 15.26 of the Code of Criminal Procedure to add language providing:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the

¹We note that you raise section 552.352 of the Government Code as an exception to disclosure. Section 552.352 states in relevant part that "[a] person commits an offense if the person distributes information considered confidential under the terms of [chapter 552]." Gov't Code § 552.352(a). Thus, section 552.352 is not an exception to disclosure under the Public Information Act (the "Act"). Rather, section 552.352 is a procedural provision that sets forth criminal penalties for the distribution of confidential information.

clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Crim. Proc. Code art. 15.26. This provision makes the submitted arrest warrant expressly public. The exceptions found in the Act do not, as a general rule, apply to information that is made public by other statutes. *See* Open Records Decision No. 525 (1989) (statutory predecessor). Therefore, the department must release the submitted arrest warrant, which we have marked, to the requestor.

We also note that some of the requested information is protected under common-law privacy. 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 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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 some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked information that the department must withhold under section 552.101 and common-law privacy.

In addition, when a law enforcement agency is asked to compile a particular individual's criminal history information, 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). We note, however, that information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common-law privacy and *Reporters Committee*. *Cf.* Gov't Code § 411.082(2)(B). In the present request, the requestor asks for all police records regarding a named individual. We determine that this request implicates the named individual's right to privacy. Thus, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal

defendant, the department must withhold such information pursuant to section 552.101 in conjunction with common-law privacy pursuant to the decision in *Reporters Committee*.²

You claim that the marked social security numbers in the remaining submitted documents are excepted from disclosure under section 552.101, article 62.08 of the Code of the Criminal Procedure, and Open Records Decision No. 662. Section 552.101 also encompasses information made confidential by another statute. Article 62.08 of the Code of Criminal Procedure provides that information contained in the Department of Public Safety ("DPS") sex offender registration database "is public information, with the exception of any information: (1) regarding the person's social security number, driver's license number, or telephone number; (2) that is required by the [DPS] under Article 62.02(b)(6); or (3) that would identify the victim of the offense for which the person is subject to registration." However, you do not inform this office, and the remaining submitted documents do not indicate, that the department obtained the marked social security numbers from the DPS sex offender registration database. Therefore, the marked social security numbers may not be withheld under section 552.101 on that basis.

The marked social security numbers may be excepted from disclosure pursuant to section 552.101 in conjunction with federal law. In Open Records Decision No. 622 (1994), this office concluded that 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 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* Open Records Decision No. 622 (1994) at 3. However, the department has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain social security numbers. Therefore, we have no basis for concluding that the social security numbers contained within the submitted information are confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing these social security numbers, the department should ensure that they were not obtained and are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

The remaining submitted documents also contain information that is subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. The department must withhold the Texas motor vehicle information we have marked under section 552.130.

²As we are able to make this determination, we do not reach your claim under section 552.108 of the Government Code.

In summary, the department must withhold the private information under section 552.101 in conjunction with common-law privacy. The department must withhold Texas motor vehicle information under section 552.130. The marked social security numbers may be confidential under federal law. We have marked the information that the department must withhold. The remaining submitted information, including the arrest warrant, 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,



Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/lmt

Ref: ID# 197794

Enc. Submitted documents

c: Mr. Glen Cox
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(w/o enclosures)