



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 14, 2004

Mr. Robert R. Ray  
Assistant City Attorney  
City of Longview  
P.O. Box 1952  
Longview, Texas 75606

OR2004-4813

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203331.

The City of Longview Police Department (the "department") received a request for "any and all incident/accident reports" relating to a named individual. You claim that the information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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." This section encompasses the common-law right to privacy, which protects information if (1) it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person and (2) the public has no legitimate interest in it. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). 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. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). However, information that refers to an individual solely as a victim, witness, or involved person is not private under *Reporters Committee* and may not be withheld under section 552.101 on that basis. Likewise, information relating to routine traffic violations is not excepted from disclosure under section 552.101 in conjunction with common-law privacy. *Cf.* Gov't Code § 411.082(2)(B).

In this instance, the requestor seeks access to unspecified criminal records involving a named individual. Thus, this request implicates the named individual's right to privacy. Therefore, to the extent that the department maintains records in which the named individual is

portrayed as a suspect, defendant, or arrestee, it must withhold such information in accordance with section 552.101 and the common-law right to privacy.

You claim that portions of the submitted information are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information related to a motor vehicle title or registration or driver's license issued by an agency of this state. Gov't Code § 552.130(a)(1), (2). Thus, the department must withhold the Texas driver's license and motor vehicle information you have marked pursuant to section 552.130.

Finally, we note that the submitted information contains a social security number that may be excepted from disclosure under section 552.101 in conjunction with federal law. Section 552.101 encompasses amendments to the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), that 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 Open Records Decision No. 622 (1994)*. We have no basis for concluding that the marked social security number 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 the social security number, you should ensure that such information is not obtained or maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, to the extent the department maintains law enforcement records depicting the individual named in the request as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you have marked pursuant to section 552.130 of the Government Code. The department may be required to withhold the marked social security number under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of Title 42 of the United States Code. The remaining submitted information 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,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/seg

Ref: ID# 203331

Enc. Submitted documents

c: Ms. Michele C. Willard  
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(w/o enclosures)