



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 24, 2004

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

OR2004-5187

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# 204017.

The City of Waco (the "city") received a request for a copy of any and all files, records and other documentation pertaining to a named individual. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Included among the documents you seek to withhold is a search warrant affidavit. The affidavit to support the search warrant is made public by statute if the search warrant has been executed. *See* Code Crim. Proc art. 18.01(b). The submitted information indicates that the search warrant has been executed. Therefore, you must release the submitted search warrant affidavit to the requestor.

We next examine your section 552.101 claim as applicable to the remaining submitted information. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common law privacy. 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). In this instance, the requestor asks for all information concerning a certain person. In this case, we believe that the individual's right to privacy has been implicated. Thus, where the named individual is a possible suspect or arrestee, this information would normally be confidential under *Reporters Committee*, and

thus excepted from release under section 552.101. However, section 552.023(a) of the Government Code affords a person or person's authorized representative a special right of access to information otherwise protected from public disclosure by laws intended to protect that person's privacy interests. As the requestor in this instance is the individual's authorized representative, you may not withhold this information under section 552.101 on the basis of the individual's right to privacy.

We note, however, that the requested information also contains a social security number. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure 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 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.* However, the only social security number in the submitted information pertains to the requestor's client. Because the Social Security Act protects privacy interests, the requestor in this instance has a special right of access under section 552.023 to her client's social security number.

Lastly, some of the requested information is confidential under section 552.130 of the Government Code.¹ In relevant part, section 552.130 provides:

(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; or
- (3) a personal identification document issued by an agency of this state of a local agency authorized to issue an identification document.

Therefore, Texas driver's license numbers, identification numbers, license plate numbers, and vehicle identification numbers would normally be excepted from disclosure pursuant to section 552.130. We note, however, that the submitted information contains a driver's license number, state identification number, license plate numbers, and vehicle identification

¹ The Office of the Attorney General will raise mandatory exceptions like section 552.130 on behalf of a governmental body but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

number pertaining to the requestor's client. Section 552.130 is designed to protect the privacy interest of the individual to whom the information relates. Therefore, you must release the driver's license number, identification number, license plate numbers, and vehicle identification number pertaining to the requestor's client pursuant to section 552.023. However, you must withhold the marked information under section 552.130 that does not pertain to this requestor's client.

In summary, you must withhold the information we have marked under section 552.130, and you must release all remaining information to this 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,


Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/krl

Ref: ID# 204017

Enc. Submitted documents

c: Ms. Naomi E. Terr
P. O. Box 421398
Houston, Texas 77242
(w/o enclosures)