



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 26, 2004

Ms. Michele Austin
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2004-6210

Dear Ms. Austin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 205740.

The Houston Police Department (the "department") received a request for all records pertaining to a named individual, including information related to nine specific case numbers. You claim that the submitted 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.

Initially, we note that you did not submit any information relating to eight of the specified case numbers for our review. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to this aspect of the request exists, we assume that you have released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. *See Gov't Code §§ 552.301(a), .302.*

Next, we must address the department's obligations under section 552.301 of the Government Code. You acknowledge that the department failed to comply with section 552.301 of the Government Code in asking for this decision. Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [Public Information Act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). Under section 552.301(e), a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents.

You indicate that the department received the present request for information on April 16, 2004. Accordingly, you were required to submit your request for a decision from this office no later than April 30, 2004. In addition, you were required to submit written comments stating the reasons why the stated exceptions apply, a copy of the written request, a signed statement showing the date the department received this request, and a copy of the specific information requested no later than May 7, 2004. You did not request a decision from this office or submit any of the required information until May 18, 2004. Consequently, we determine that the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). You assert that some of the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Section 552.101, which encompasses "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," generally can provide a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 630 (1994) (presumption of openness overcome by a

showing that the information is made confidential by another source of law or affects third party interests). The informer's privilege, however, is held by the governmental body and serves to protect its interests in preserving the flow of information to the governmental body. *See Roviario v. United States*, 353 U.S. 53, 59 (1957). Accordingly, a governmental body is free to waive the informer's privilege and release information for which it otherwise could claim the exception. Open Records Decision No. 549 at 6 (1990). Thus, the informer's privilege does not constitute a compelling reason to overcome the presumption of openness. We therefore determine that none of the information at issue may be withheld pursuant to the informer's privilege. We will, however, address your remaining claims under sections 552.101 and 552.130.

Section 552.101 of the Government Code 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). 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). A request for information about a specific incident or offense, however, does not require the law enforcement agency to compile an individual's criminal history and thus does not implicate the individual's privacy as contemplated in *Reporters Committee*.

The present request, in part, asks for all information held by the department concerning a named individual. We find that this portion of the request requires the department to compile the criminal history of the named individual, and thus implicates the individual's right to privacy as contemplated in *Reporters Committee*. Accordingly, to the extent the department maintains law enforcement information depicting the named individual as a suspect, arrestee, or criminal defendant, such information is excepted from disclosure under section 552.101 in conjunction with common-law privacy.

However, the requestor also asks for information related to specified case numbers. You have submitted to this office an incident report that relates to case number 0498916. Because the requestor specifically asks for this information, it is not part of a compilation of an individual's criminal history as contemplated in *Reporters Committee*, and may not be withheld on that basis.

You assert that portions of the incident report that relates to case number 0498916 are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts information relating to a Texas motor vehicle driver's license. Gov't Code § 552.130. We note, however, that section 552.130 is designed to protect individuals' privacy and that the right to privacy expires at death. *See Moore v. Charles B. Pierce Film*

Enters. Inc., 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). Accordingly, Texas driver's license numbers that pertain to living persons must be withheld under section 552.130. Texas driver's license numbers that were issued to persons who are now deceased may not be withheld under section 552.130.

We note that the incident report that relates to case number 0498916 contains account numbers that are subject to section 552.136 of the Government Code. Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136. This provision was enacted to protect individuals' privacy, and therefore, the protection extinguishes at the individual's death. *See Moore*, 589 S.W.2d at 491. Thus, pursuant to section 552.136, the department must withhold the marked account numbers only if a living person has an interest in the accounts. Otherwise, the department must release the account numbers.

In summary, to the extent the requested records contain a compilation of the named individual's criminal history, such information must be withheld under section 552.101 in conjunction with common-law privacy. The department must withhold Texas-issued driver's license numbers that pertain to living individuals under section 552.130. The department must withhold the marked account numbers if they pertain to accounts in which a living individual maintains an interest. The remaining submitted information must be released.

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/sdk

Ref: ID# 205740

Enc. Submitted documents

c: Mr. Christopher Richart
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(w/o enclosures)