



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 7, 2005

Constable Charles E. Wilson  
Smith County, Precinct 4  
P.O. Box 318  
Winona, Texas 75792

OR2005-00264

Dear Constable Wilson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 216461.

The Smith County Precinct 4 Constable's Office (the "constable") received a request for "documentation used to support a series of [political] ads published . . . in the Oct. 17 issue of the *Tyler Courier-Times Telegraph*." You ask if some of the requested information is excepted from disclosure. We have considered your questions and reviewed the submitted representative sample of information.<sup>1</sup> We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that the submitted information includes an executed arrest warrant. Article 15.26 of the Code of Criminal Procedure states

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, *is public information*, and beginning

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 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. 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 executed arrest warrant must be released to the requestor pursuant to article 15.26.

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 information protected by other statutes. Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

The information that we have marked involves juvenile conduct that occurred after September 1, 1997. None of the exceptions in section 58.007 appear to apply. Therefore, the marked information is confidential pursuant to section 58.007(c) of the Family Code, and must be withheld from disclosure under section 552.101 of the Government Code.

The submitted records include a rabies vaccination certificate that contains information excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 826.0211 of the Health and Safety Code. Section 826.0211 provides in pertinent part that "[i]nformation that is contained in a rabies vaccination

certificate that identifies or tends to identify the owner or an address, telephone number, or other personally identifying information of the owner of the vaccinated animal is confidential and not subject to disclosure under Chapter 552, Government Code.” Health & Safety Code § 826.0211(a). The only exception to this confidentiality is that the information may be disclosed “to a governmental entity for purposes related to the protection of public health and safety.” Health & Safety Code § 826.0211(b). In this instance, the requestor is not a governmental entity, and therefore, section 826.0211(b) is inapplicable. Therefore, the constable must withhold the identifying information in the vaccination certificate that we have marked pursuant to section 552.101 in conjunction with section 826.0211(a) of the Health and Safety Code.

We note that the submitted information includes social security numbers. 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 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 numbers are 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 Act 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 constable pursuant to any provision of law enacted on or after October 1, 1990.

We understand you to ask if portions of the submitted information, including dates of birth and telephone numbers, are excepted from disclosure under common-law privacy.<sup>2</sup> 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). 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.

In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: an individual’s criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (citing *United States*

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<sup>2</sup>Section 552.101 also encompasses the doctrine of common-law privacy.

*Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

After review, we find that the information you seek to withhold does not constitute information that is highly intimate or embarrassing for purposes of common-law privacy and may not be withheld on this basis. *See* Attorney General Opinion MW-283 (1980); *see generally* Open Records Decision Nos. 554 at 3 (1990) (disclosure of person's home address and telephone number is not invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers do not generally qualify as "intimate aspects of human affairs"). However, we have marked some information that is private and must be withheld under section 552.101.

Finally, we note that section 552.130 of the Government Code is applicable to some of the submitted information. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirements 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[.]

Therefore, the constable must withhold the information we have marked under section 552.130.

In summary: (1) the executed arrest warrant must be released to the requestor pursuant to article 15.26 of the Code of Criminal Procedure; (2) the marked information is confidential pursuant to section 58.007(c) of the Family Code, and must be withheld from disclosure under section 552.101 of the Government Code; (3) the constable must withhold the identifying information in the vaccination certificate that we have marked pursuant to section 552.101 in conjunction with section 826.0211(a) of the Health and Safety Code; (4) social security numbers may be confidential under federal law; (5) we have marked the information that must be withheld under section 552.101 in conjunction with common-law privacy; (6) the constable must withhold the information we have marked under section 552.130 of

the Government Code; and (7) the remaining submitted information must be released to the requestor.<sup>3</sup>

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).

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<sup>3</sup>You have also raised questions under the cost provisions of the Act. These provisions are found at subchapter F of chapter 552 of the Government Code. See Gov't Code § 552.261 *et seq.* The Texas Building and Procurement Commission ("TBPC") is responsible for the administration and enforcement of these provisions. Section 552.262 directs the TBPC to adopt rules for use by each governmental body in determining charges for providing copies of public information under chapter 552. The rules adopted by the TBPC are found at title 1 of the Texas Administrative Code. The constable must comply with subchapter F of the Act and the rules adopted by the TBPC relating to charging for copies of public information. You should direct any questions that relate to these cost provisions to the TBPC.

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/sdk

Ref: ID# 216461

Enc. Submitted documents

c: Ms. Jacque Hilburn  
Tyler Morning Telegraph  
P.O. Box 2030  
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(w/o enclosures)