



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 7, 2006

Mr. John T. Patterson
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2006-02239

Dear Mr. Patterson:

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# 243669.

The Waco Police Department (the "department") received a request for all arrest reports for a named individual specifically including an arrest report for an assault that occurred at a particular location. You state that you will release a portion of the requested information. You claim that the remaining requested 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." Gov't Code § 552.101. Section 552.101 encompasses common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (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 *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor asks, in part, for all reports concerning a named individual. We find that this request for unspecified law

enforcement records requires the department to compile the criminal history of the individual and thus implicates the individual's right to privacy as contemplated in *Reporters Committee*. *See id.* Thus, to the extent the department maintains any unspecified law enforcement information where the named individual is depicted as a possible suspect, arrestee, or criminal defendant such information is excepted from disclosure under section 552.101 in conjunction with common law privacy and the decision in *Reporters Committee*.

However, we note that when a requestor asks for information relating to a particular incident this portion of the request does not implicate the privacy concerns expressed in *Reporters Committee* because complying with the request does not require the governmental body to compile unspecified records. Therefore, we will address your arguments pertaining to case number 92-41054.

Section 552.130 of the Government Code, 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 driver's license number we have marked pursuant to section 552.130.

Finally, we address section 552.147 of the Government Code. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.¹ Gov't Code § 552.147. Therefore, the department must withhold the social security number we have marked under section 552.147.

In summary, to the extent that the department maintains records other than case number 92-41054 in which the named individual is portrayed as a suspect, arrestee, or criminal defendant, any such information is private under *Reporters Committee* and must be withheld under section 552.101. The Texas motor vehicle record information we have marked must be withheld pursuant to section 552.130. The social security number we have marked must be withheld under section 552.147 of the Government Code. The remaining 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

¹We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Matthew T. McLain
Assistant Attorney General
Open Records Division

MM/jh

Ref: ID# 243669

Enc. Submitted documents

c: Mr. Donnee Tidmore
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(w/o enclosures)