



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2006

Chief Don Hatcher
Leander Police Department
200 West Willis Street
Leander, Texas 78641

OR2006-08580

Dear Mr. Hatcher

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# 255435.

The Leander Police Department (the "department") received a request for all police reports pertaining to two named individuals. 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.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of 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). 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. *Id.* at 683.

A portion of the submitted documents contain information that is considered highly intimate or embarrassing and of no legitimate concern to the public. In most cases, the department would be allowed to withhold only this information. In this instance, however, the requestor

knows the identity of the individual involved as well as the nature of the information in question. Therefore, withholding only certain details of the incident from the requestor would not preserve the subject individual's common law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, we determine that the department must withhold the information we have marked in its entirety under section 552.101.

In addition, while the remaining information contains information protected by common law privacy, the requestor, as the individual to whom this private information pertains, has a special right of access to this information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to information that is protected by laws intended to protect person's privacy). Therefore, none of the remaining information may be withheld under section 552.101 in conjunction with common law privacy.

Section 552.101 also encompasses criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with chapter 411, subchapter F. *See* Gov't Code § 411.082(2)(B) (term CHRI does not include driving record information). Therefore, the department must withhold the CHRI that we have marked under section 552.101 in conjunction with federal law and chapter 411 of the Government Code. We note, however, that DPS has the authority to release an individual's own CHRI to that individual. Gov't Code § 411.083(b)(3).

Next, we note that the submitted information contains a Texas driver's license number.¹ Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state

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

or a motor vehicle title or registration issued by an agency of this state. Gov't Code §552.130(a)(1) - (2). Thus, the department must withhold the information that we have marked under section 552.130.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code and the marked driver's license number under section 552.130 of the Government Code. The remaining submitted information must be released.²

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, 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).

²As the requestor has a right of access to information in the submitted documents that otherwise would be excepted from release under the Act, should the department receive a request for this information from a different requestor, it must again seek a decision from this office.

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,



Anne Prentice
Assistant Attorney General
Open Records Division

AP/sdk

Ref: ID# 255435

Enc. Submitted documents

c: Ms. Donna Parra
100 Berry Court
Kyle, Texas 78640
(w/o enclosures)