



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 13, 2007

Ms. Helen Valkavich  
Assistant City Attorney  
City of San Antonio  
P. O. Box 839966  
San Antonio, Texas 78283-3966

OR2007-02780

Dear Ms. Valkavich:

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# 273198.

The City of San Antonio (the "city") received two requests for "the number of applications submitted and vendors' sign in sheets for the stationary Riverwalk positions as of Thursday at 4:30 PM December 14<sup>th</sup> in addition to the privately control submitted applications and sign-in sheets for the Downtown Business Districts and Riverwalk." You state that you will release most of the requested information. You claim, however, that the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.136, 552.137, and 552.147 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Section 6103(a) of title 26 of the United States Code makes federal tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Tax return information is defined as data furnished to or collected by the IRS with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). The tax identification numbers that you have marked do not fall within the definition of tax return information. We therefore

conclude that the city may not withhold the tax identification numbers under section 552.101 of the Government Code as information made confidential by federal law.

Section 552.101 also encompasses the doctrine of common-law privacy, which 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. In this instance, however, the request is for applications, rather than for an unspecified compilation of a named person's criminal history. Thus, we find that the request does not require the city to compile an individual's criminal history, and the city may not withhold any of the submitted information on that basis. We note, however, that this office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common law privacy. *See Open Records Decision Nos. 545 (1990), 523 (1989)*. Accordingly, the city must withhold the financial information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

You claim that some of the information you have marked is excepted from public disclosure under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure 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[.]

Gov't Code § 552.130(a)(1), (2). Upon review, we agree that you must withhold the Texas-issued motor vehicle record information you have marked, as well as the information we have marked, under section 552.130 of the Government Code.

You claim that the bank account number you have marked is excepted from public disclosure under section 552.136 of the Government Code, which provides:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. Upon review, we agree that you must withhold the bank account number you have marked under section 552.136 of the Government Code.

You claim that some of the information you have marked is excepted from public disclosure under section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail addresses contained in the submitted information are not the type specifically excluded by section 552.137(c). Therefore, unless the individuals whose e-mail addresses are at issue consented to release of their e-mail addresses, the city must withhold them in accordance with section 552.137 of the *Government Code*.

You claim that some of the information you have marked is excepted from public disclosure under section 552.147 of the Government Code. Section 552.147 provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147. Therefore, the city must withhold the marked social security numbers under section 552.147 of the Government Code.<sup>1</sup>

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<sup>1</sup>We 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.

In summary, the city must withhold the financial information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the Texas-issued motor vehicle record information you have marked under section 552.130 of the Government Code. The city must withhold the bank account number you have marked under section 552.136 of the Government Code. Unless the individuals whose e-mail addresses are at issue consented to release of their e-mail addresses, the city must withhold them in accordance with section 552.137 of the Government Code. The city must withhold the marked social security numbers under section 552.147 of the Government Code. As you do not raise any other exceptions against disclosure, the remaining 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, 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,



Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/krl

Ref: ID# 273198

Enc. Submitted documents

c: Mr. Michael John  
238 Tansyl Drive  
San Antonio, Texas 78213  
(w/o enclosures)