



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 20, 2007

Mr. Christopher Gregg
Gregg & Gregg, P.C.
16055 Space Center Boulevard, Suite 150
Houston, Texas 77062

OR2007-03062

Dear Mr. Gregg:

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# 273822.

The City of South Houston (the "city"), which you represent, received a request for e-mails sent or received by the city police chief during a specified time interval. You state that the city has released some of the requested information. You claim that other responsive information is excepted from disclosure under sections 552.101, 552.107 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.¹

Initially, we address your representation that pursuant to sections 552.117, 552.1175, and 552.137 of the Government Code, the city redacted information from the documents that were released to the requestor. Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure, unless the information is the subject of a previous determination. See Gov't Code §§ 552.006, .301(a), .302; Open Records Decision No. 673 (2001) (previous determinations). Among other things, a governmental body must submit to this office either the specific information that it seeks to withhold or representative samples if the information is voluminous. See Gov't Code § 552.301(e)(1)(D). We note that section 552.147(b) of the Government Code authorizes a

¹We note that the city has redacted some of the submitted information. As we are able in this instance to discern the nature of the redacted information, we will determine whether it is excepted from public disclosure. In the future, the city should refrain from redacting any information that it submits to this office in seeking an open records ruling. See Gov't Code §§ 552.301(e)(1)(D), .302.

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. We also note that Open Records Decision No. 670 (2001) authorizes all governmental bodies covered by the Act to withhold the home addresses and telephone numbers, personal cellular phone and pager numbers, social security numbers, and family member information of peace officers, as defined by article 2.12 of the Code of Criminal Procedure, without the necessity of requesting an attorney general decision as to whether the information is excepted from disclosure under section 552.117(a)(2) of the Government Code. *See* ORD 670 at 6. You do not inform us that the city has any other authorization to withhold information under section 552.117, section 552.1175, or section 552.137 without first requesting a decision under section 552.301. Therefore, except for any information that the city is authorized to withhold pursuant to section 552.147(b) of the Government Code or Open Records Decision No. 670, the city must release the information that was redacted under sections 552.117, 552.1175, and 552.137.

Next, we address another threshold issue under section 552.301. Section 552.301(b) requires a governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). You inform us that the city received the instant request for information on December 13, 2006. Accordingly, the city's ten-business-day deadline under section 552.301(b) was December 29, 2006. The envelope in which you submitted your request for this decision was meter-marked January 8, 2007. You inform us that the city entered into an agreement with the requestor "to allow [the city] additional time (until January 8, 2007) to raise objections to the disclosure of the requested documents." We note, however, that the deadlines prescribed by section 552.301 are fixed by statute and cannot be altered by agreement. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990), 514 at 1-2 (1988).² Thus, the city did not comply with section 552.301 in requesting this decision, and the submitted information is therefore presumed public and must be released under section 552.302 of the Government Code, unless there is a compelling reason to withhold any of the information. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. – Austin 1990, no writ).

This statutory presumption can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Although the city claims exceptions to disclosure under sections 552.107 and 552.108 of the Government Code, those sections are discretionary exceptions that protect a governmental body's interests and may be waived. *See* Open

²*See also Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976) (governmental agency may not bring information within scope of predecessor to Gov't Code § 552.101 by promulgation of rule; to imply such authority merely from general rule-making powers would be to allow agency to circumvent very purpose of predecessor to Act); *Bristol-Myers Squibb Co. v. Goldston*, 957 S.W.2d 671, 673 (Tex. App.—Fort Worth 1997, pet. denied) ("Because venue is fixed by law, any agreement or contract whereby the parties try to extend or restrict venue is void as against public policy").

Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). The city's claims under sections 552.107 and 552.108 are not compelling reasons for non-disclosure under section 552.302. In failing to comply with section 552.301, the city has waived sections 552.107 and 552.108. Therefore, the city may not withhold any of the submitted information under section 552.107 or section 552.108. We note, however, that some of the submitted information falls within the scope of sections 552.101, 552.130, 552.136, 552.137, and 552.147 of the Government Code. As those exceptions are mandatory and may not be waived, we will address their applicability. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of this test must be established. *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. We have marked criminal history information that the city must withhold under section 552.101 in conjunction with common-law privacy.

Common-law privacy also encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We also have determined that financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989)

(noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). We have marked medical and personal financial information that must also be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). We have marked Texas driver's license and motor vehicle information that the city must withhold under section 552.130. We note that this exception is not applicable to out-of-state motor vehicle information.

Section 552.136(b) states that "[n]otwithstanding any other provision of [the Act], 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." *Id.* § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). We have marked an account number that the city must withhold under section 552.136.

Section 552.137(a) states that "[e]xcept as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter." Gov't Code § 552.137(a). This section excepts from disclosure personal e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the owner of the e-mail address has affirmatively consented to its public disclosure. *See id.* § 552.137(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under section 552.137. *See id.* § 552.137(c). Likewise, this exception is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We have marked personal e-mail addresses that the city must withhold under section 552.137, unless the owner of an e-mail address has affirmatively consented to its disclosure.

Section 552.147 provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.³ Gov't Code § 552.147(a). We have marked a social security number that the city must withhold under section 552.147.

Lastly, we note that some of the submitted information appears to be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception

³We 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.

to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

In summary: (1) the city must withhold the marked criminal history, medical, and personal financial information under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the marked Texas driver's license and motor vehicle information must be withheld under section 552.130 of the Government Code; (3) the marked account number must be withheld under section 552.136 of the Government Code; (4) the marked e-mail addresses must be withheld under section 552.137 of the Government Code, unless the owner of an e-mail address has affirmatively consented to its disclosure; and (5) the marked social security number must be withheld under section 552.147 of the Government Code. The rest of the submitted information must be released. Any information that is protected by copyright must be released in accordance with copyright law.

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).

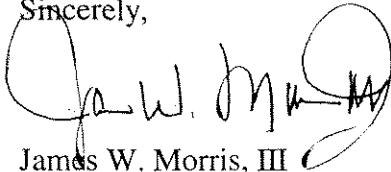
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/jb

Ref: ID# 273822

Enc: Submitted documents

c: Mr. Gregory B. Cagle
Cagle & McCumber
215 East Galveston Street
League City, Texas 77573
(w/o enclosures)