



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2008

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2008-07070

Dear Mr. Phillips:

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# 310701.

The City of Fort Worth (the "city") received a request for all records pertaining to a specified criminal case. You state you have provided the requestor with some of the requested information. You also state that you have redacted certain Texas motor vehicle record information under section 552.130 of the Government Code pursuant to previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You further state that you are withholding social security numbers under section 552.147 of the Government Code.¹ You indicate, however, that the city does not seek to withhold the social security or driver's license numbers of the requestor or deceased individuals. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); *see also Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.) (right of privacy lapses at death, and Texas does not recognize relational or derivative right of privacy). You claim that portions of the submitted police records are 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.

¹ We note that section 552.147(b) 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.

Initially, we note that you have redacted personal information of a deceased peace officer pursuant to section 552.117(a)(2) of the Government Code. The previous determination issued in Open Records Decision No. 670 (2001) authorizes the city to withhold the home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of its peace officers under section 552.117(a)(2) without the necessity of requesting an attorney general decision.² See Open Records Decision No. 670 at 6. We note, however, that section 552.117 only applies to records that the governmental body is holding in an employment capacity. In this instance, you have redacted the officer's personal information from a 1993 autopsy report, which is a record that the city holds in its law enforcement capacity regarding the death of this officer while he was off duty. Therefore, section 552.117(a)(2) does not apply to the officer's personal information you have redacted, and it may not be withheld on this basis. As you have raised no other exceptions to disclosure for this information, it must be released.

Next, we note that a portion of the submitted information is illegible. As this office cannot review illegible information, we conclude that you have failed to comply with the requirements of section 552.301 with respect to the illegible information. See Gov't Code § 552.301(e)(1)(D). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released unless a compelling reason exists to withhold the information from disclosure. See *id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977).

In this instance, although the city raises mandatory exceptions to disclosure, because the city has not submitted the illegible information in a form we can review, we have no basis for finding it confidential. Therefore, we have no choice but to order the city to release this information. If you maintain a legible copy of this information, and you believe that any of the information is confidential and may not lawfully be released, then you must challenge this ruling in court as outlined below. However, we will address your arguments under sections 552.101 and 552.130 for the legible portion of 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 former section 51.14 of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code

² We note that section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure.

provided for the confidentiality of juvenile law enforcement records. *See* Open Records Decision No. 181 (1977) (concluding that former section 51.14(d) of the Family Code excepts police reports that identify juvenile suspects or furnish basis for their identification). Law enforcement records pertaining to conduct occurring before January 1, 1996, are governed by former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Section 51.14 only applies to records of a "child," which is defined as a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). In this instance, Exhibit D is an investigation of juvenile delinquent conduct that occurred prior to January 1, 1996. *See id.* § 51.03 (defining "delinquent conduct"). Although Exhibit C relates to a criminal investigation involving adults, Exhibit C contains juvenile law enforcement records, which we have marked. Therefore, Exhibit D and the information we have marked in Exhibit C are confidential under former section 51.14 of the Family Code and must be withheld under section 552.101 of the Government Code. *See id.* § 51.04(a) (title 3 covers cases involving delinquent conduct or conduct indicating need for supervision engaged in by a child).

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate and embarrassing. *See* Open Records Decision No. 545 (1990). We have marked lien information in Exhibit C that constitutes personal financial information. Further, we find that there is not a legitimate public interest in the release of this information. Thus, the city must withhold the lien information we have marked in Exhibit C under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. 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 at 7 (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 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 the 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. Similarly, any CHRI obtained from the DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Furthermore, a compilation of a private citizen's criminal history is highly embarrassing information that is generally not of legitimate public interest. *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). Accordingly, we have marked the criminal history information in Exhibit C that must be withheld under section 552.101 of the Government Code.

You claim that some of the remaining information in Exhibit C is confidential under section 552.130, which 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[.]" Gov't Code § 552.130(a)(1). Therefore, the city must withhold the Texas motor vehicle record information you have marked in Exhibit C under section 552.130.³

In summary, the city must withhold under section 552.101 of the Government Code: Exhibit D and the information we have marked in Exhibit C in conjunction with former section 51.14 of the Family Code; the lien information we have marked in Exhibit C in conjunction with common-law privacy; and the criminal history information we have marked in Exhibit C in conjunction with chapter 411 of the Government Code and in conjunction with common-law privacy. The city must also withhold the Texas motor vehicle record information you have marked in Exhibit C under section 552.130 of the Government Code. 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days.

³ We note that the types of information the city seeks to withhold under section 552.130 were not addressed in the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007).

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).

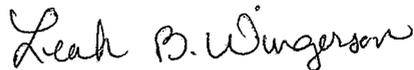
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 310701

Enc. Submitted documents

c: Ms. Laurie Pinson
321 Old Elkhart Road, 14
Palestine, Texas 75801
(w/o enclosures)