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Texas State Document

February 2, 2000

Ms. Bonnie Lee Goldstein
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, L.L.P.
3000 Bank One Center
1717 Main Street
Dallas, Texas 75201-4335

OR2000-0353

Dear Ms. Goldstein:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131811.

The City of McKinney (the "city"), which you represent, received a request for information on a named individual. You advise the city has released documents responsive to the request, but has redacted certain information from the documents. You have provided for our review the responsive documents, marked as exhibit "3." You assert that the redacted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you assert and reviewed the submitted documents.

You indicate social security number information to be among the types information you have redacted. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. A social security number or "related record" is excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act if the information was obtained or maintained pursuant to any provision of law enacted on or after October 1, 1990. *See* 42 U.S.C. § 405(c)(2)(C)(viii)(I); Open Records Decision No. 622 (1994). You advise the city finds "no specific law or authority relative to the authority of a peace officer to request an individual's social security number." You further explain that at times "the social security number is the only means an officer has to make a correct identification of an individual detained or placed under arrest, or ascertain their criminal history." From these representations, we thus assume

the social security number information at issue was obtained pursuant to a policy or practice of the city, but not pursuant to any provision of law enacted on or after October 1, 1990. The information is therefore not made confidential by section 552.101 of the Government Code in conjunction with 42 U.S.C. § 405(c)(2)(C)(viii)(I).

Section 552.101 also encompasses the common law right to privacy. You aver the social security number information should be excepted from disclosure as implicating the named individual's common law right to privacy. In support of this assertion, you argue:

Given the potential abuses which could be made if this information is released to the public balanced against the legitimate need of law enforcement for such information, such information should be deemed excepted from public disclosure as a matter of public policy. The Attorney General should reconsider its opinion in Open Records Decision No. 169 (1977) that the common law right to privacy does not protect social security numbers; the public has no demonstrable legitimate need for this information and given unquestionable potential for abuse, constitutes an unwarranted invasion of privacy.

The common law right to 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Your argument does not address the first prong of this test. We find that the social security number information at issue does not meet the first prong of this test because it does not consist of "highly intimate or embarrassing" information. The social security number information is therefore not excepted from disclosure under the common law right to privacy.¹ Open Records Decision No. 169 (1977).

We note the documents do contain certain personal financial information, a checking account number and a credit card number. This office has found that an individual's personal financial information not relating to a financial transaction between the individual and a governmental body is excepted from required public disclosure under common law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). We find no indication that the financial information at issue relates to a transaction between the named individual and a governmental body. We have accordingly marked the financial information for

¹We also note your argument essentially weighs the "potential for abuse" of such information against the second prong of the common law privacy test. We advise the motive of the requestor is not a criterion to be considered in determining whether information is excepted from disclosure under the Public Information Act. *See* Gov't Code § 552.222 (a governmental body is prohibited from inquiring into a requestor's reasons or motives for requesting information); Gov't Code § 552.223 (a governmental body must treat all requests for information uniformly).

redaction and determine that this information must be withheld pursuant to section 552.101 in conjunction with the common law right to privacy.

You next assert the social security number information should be excepted from disclosure under section 552.108, which provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

* * *

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state "the social security number is the only means an officer has to make a correct identification of an individual detained or placed under arrest, or ascertain their criminal history." Based on this representation, you thus argue:

If the information is deemed open, individuals, understandably, will be reluctant to provide this information to peace officers with a legitimate need for the information. Inability to obtain social security number information,

will have a very real and practical effect of unduly interfering with law enforcement and crime prevention. . . . If this information is deemed public, citizens would be well within their rights in protecting their personal privacy interests to refuse to give an officer this information, thus hindering the officer's ability to effectively prevent crime and enforce the laws of this State.

As you acknowledge, however, the Penal Code provides for criminal sanctions where one who is arrested fails to provide the peace officer with his or her name, residence address, or date of birth. Moreover, the same section also provides for criminal sanctions for certain individuals who give a false or fictitious name, residence address, or date of birth to a peace officer. *See* Penal Code § 38.02. We find this section expresses the legislative intent with respect to the identification of individuals to peace officers. We also cannot agree that a peace officer's *sole* means of correctly identifying an individual arrested or detained is through obtaining the individual's social security number, nor can we agree that individuals would necessarily refuse to divulge social security number information to a peace officer on the basis that the information may later be subject to a public information request. Your argument thus does not establish that release of the social security number information in the submitted documents would interfere with law enforcement.² The social security number information at issue may not therefore be withheld pursuant to section 552.108. You must release this information to the requestor.

Finally, the submitted documents contain motor vehicle information such as driver's license numbers, license plate numbers, and vehicle identification numbers. Section 552.130 of the Public Information Act 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;*
- (2) a motor vehicle title or registration *issued by an agency of this state;* or

²Moreover, your assertion that, as a matter of public policy, social security number information should not be subject to release in this context fails to acknowledge that the 76th Legislature recently amended section 552.108 to exclude from the law enforcement exception "basic information about an arrested person, an arrest, or a crime." *See* Gov't Code § 552.108(c). In *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the Texas Supreme Court held that an arrestee's social security number found in a police plotter must be released to the public. Pursuant to *Houston Chronicle*, this office summarized the types of basic information held to be public by the court. Open Records Decision No. 127 (1976). We note that the basic information required to be released from an offense report includes the identification and description of a complainant, but not necessarily the complainant's social security number. Open Records Decision No. 127 at 4 (1976).

(3) a personal identification document *issued by an agency of this state* or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Gov't Code § 552.130 (emphasis added). We note the motor vehicle information at issue relates to Ohio, not Texas. We therefore do not agree that the submitted documents contain the types of motor vehicle information described by section 552.130(a). The city therefore may not withhold this information under this section. Except as otherwise noted herein, you must release the responsive information in its entirety 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.

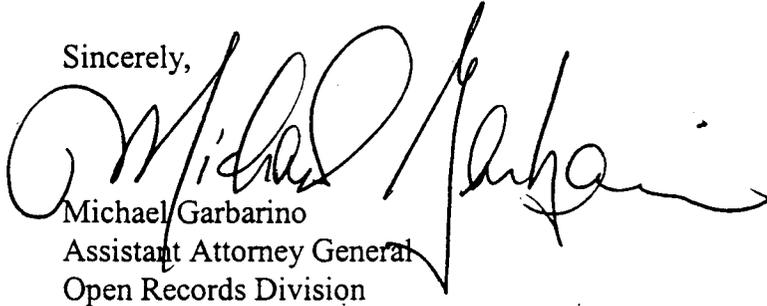
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/jc

Ref: ID# 131811

Encl. Submitted documents

cc: Mr. Jacque Hilburn
The Courier-Gazette
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(w/o enclosures)