



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 15, 1998

Mr. Miles K. Risley  
Senior Assistant City Attorney  
Legal Department  
City of Victoria  
P.O. Box 1758  
Victoria, Texas 77902-1758

OR98-2436

Dear Mr. Risley:

You ask that we reconsider the portions of our decision in Open Records Letter No. 98-1693 (1998) that concerned first, the applicability of section 552.108 of the Government Code to the requested information and second, the required public disclosure of social security numbers. We assigned your request for reconsideration ID# 118922.

Open Records Letter No. 98-1693, which concerned a request for records about "Priscilla Flores, former or present municipal court employee," determined that the City of Victoria (the "city") must withhold portions of the information at issue pursuant to sections 552.101, 552.117 and 552.130 of the Government Code. The ruling found that the city may not withhold any portion of the requested information based on section 552.108 of the Government Code because we found that the city had waived this exception by not submitting to this office a copy of the written request for information as the city is required to do under section 552.301 of the Government Code. *See* Open Records Decision No. 177 (1977); *see also* Gov't Code §§ 552.302, .303. This office did not receive a copy of the request for information with the city's original submissions. We notified the city on June 19, 1998 that the city must submit to us a copy of the request. The notification states that failure to submit the information may result in the legal presumption that the information is public information. *Id.* § 552.303(e). Open Records Letter No. 98-1693 concluded that, because this office had not received a response to our notification, as provided by section 552.303(e) of the Government Code, the city had waived section 552.108 of the Government Code.

You now state that the "presumption was based entirely on your loss of both copies of the request for information that was submitted to you, for which the City of Victoria was

not at fault.” This office does not have the city’s alleged submissions. You submit the affidavit of Ms. Wendy Herman, Legal Assistant in the city’s Legal Department. Ms. Herman swears on oath that she provided a copy of the request for information with the city’s original submissions and again on June 22, 1998. We have no evidence to the contrary although it is unlikely that this office lost both copies.

The Open Records Act requires the city to “submit to the attorney general a copy of the written request for information,” and to “supply to the attorney general all of the specific information that is necessary to render a decision” within the statutory deadline. Gov’t Code §§ 552.301(b)(2), 552.303(c). Section 552.308 of the Government Code provides:

When this subchapter requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period, the requirement is met in a timely fashion if the document is sent to the person by first class United States mail properly addressed with postage prepaid and

1. It bears a post office cancellation mark indicating a time with the period, or
2. The person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail within the period.

Notwithstanding the fact that this office has no evidence of receiving the information, we are compelled to accept the affidavit as evidence that the city timely submitted and supplied the information to this office. Again, we have no evidence to the contrary. We therefore find that the city did not waive section 552.108.

In your original letter to this office, you argued that section 552.108 is applicable to information that relates to an active investigation. Section 552.108 excepts from required public disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. Gov’t Code § 552.108(a)(1). We believe the city established that the release of the information would interfere with the detection, investigation, or prosecution of crime. However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing 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). Thus, with the exception of the basic information, the city may withhold the information from disclosure based on section 552.108(a)(1). Open Records Letter No. 98-1698 is overruled to the extent it conflicts with this decision.

Turning to the social security numbers, you inform us that the social security numbers that appear in the information at issue were obtained or maintained by city "personnel . . . who are only employed by the city pursuant to a budget adopted annually." You state that you will recommend that city officials not release the numbers. Social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990 are confidential under the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). This office agrees that the social security numbers are confidential if the city determines that the city obtained and maintains the numbers pursuant to a law enacted on or after October 1, 1990.

If you have any questions about this ruling, please call our office.

Yours very truly,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/ch

Enclosures: Submitted documents

Ref: ID# 118922

cc: Ms. Sonja Miori  
304 Garcitas Grove  
Inez, Texas 77968  
(w/o enclosures)