



April 8, 1999

Ms. Sara Fauls
City Attorney
City of Copperas Cove, Texas
P.O. Drawer 1449
Copperas cove, Texas

OR99-0933

Dear Ms. Fauls:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 123547.

The Copperas Cove Police Department (the “department”) received an open records request for its records pertaining to the arrest and conviction of a named individual. You contend that the requested information is excepted from required public disclosure pursuant to sections 552.101, 552.103, and 552.108(a)(1) of the Government Code.

To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); Open Records Decision No. 588 at 1 (1991). In this instance you have not made the requisite showing that the requested information relates to litigation for purposes of section 552.103. The requested records therefore may not be withheld pursuant to section 552.103.

Section 552.108(a)(1) of the Government Code excepts from required public disclosure “[i]nformation 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[.]” This exception is intended to protect from public disclosure information the release of which would interfere with law enforcement, such as information pertaining to pending criminal investigations. *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) (court delineates law

enforcement interests present in active cases); *compare with* Gov't Code § 552.108(a)(2) (protecting records pertaining to criminal investigations that did not result in conviction or deferred adjudication). The information at issue does not pertain to a pending investigation, but rather an investigation that resulted in a deferred adjudication. Further, a review of the police records does not reveal any criminal investigation techniques that are not commonly known to the public. *See* Open Records Decision No. 216 at 4 (1978). We therefore conclude that section 552.108(a)(1) does not protect any of the requested information from required public disclosure.¹

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. After reviewing the information at issue, we conclude that none of the information meets the test for common-law privacy. The department may not withhold any of the requested information on these grounds.

Section 552.101 also protects the “informer's privilege.” The informer’s privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer’s privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, *by preserving their anonymity*, encourages them to perform that obligation. [Emphasis added.]

The “informer’s privilege” aspect of section 552.101 protects the identity of persons who report violations of the law. The privilege does not, however, protect the contents of communications if they do not reveal the identity of the informant. *Roviaro*, 353 U.S. at 60;

¹You have cited to *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996), to support your section 552.108 claim. We note that the *Holmes* court construed the former section 552.108, which is no longer in effect. The Seventy-fifth Legislature made significant, substantive changes to section 552.108. Thus, the former section 552.108 and the *Holmes* interpretation of the former section 552.108, are superseded by the amended section 552.108.

see also Open Records Decision No. 208 (1978) (informer's privilege does not apply where informant's identity is known to individual who is subject of complaint). In this instance, the only informant is identified as an unnamed individual. We therefore conclude that the informer's privilege is inapplicable here.

None of the exceptions you raise protect the requested information from public disclosure. The department therefore must release the requested information in its entirety, with the following exceptions.

Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 at 1 (1982), we will raise section 552.130 of the Government Code because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Gov't Code § 552.352.

Section 552.130(a)(1) of the Government Code requires that the department withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state" while section 552.130(a)(2) requires the withholding of information relating to "a motor vehicle title or registration issued by an agency of this state." Some small portions of the requested records contain the individual's driver's license numbers and automobile license plate numbers. Because this type of information is made confidential under section 552.130(a) of the Government Code, we conclude that the department must withhold these types of information pursuant to section 552.130(a).

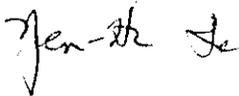
We also note that this office concluded in Open Records Decision No. 622 at 3 (1994) that amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii)(I), make confidential any social security number obtained or maintained by any "authorized person" pursuant to any provision of law, enacted on or after October 1, 1990, and that any such social security number is therefore excepted from required public disclosure by section 552.101 of the Government Code.

It is not apparent to us that the social security numbers contained in the records at issue were obtained or are maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are therefore confidential under section 552.101 of the Government Code in conjunction with section 405(c)(2)(C)(vii)(I). We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information.

Prior to releasing the social security numbers, the department should ensure that the numbers were not obtained nor are maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Yen-Ha Le".

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/RWP/nc

Ref: ID# 123547

Enclosures: Submitted documents

cc: Mr. Michael J. Puglise
Attorney at Law
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Snellville, Georgia 30078
(w/o enclosures)