



October 11, 1999

Ms. Allison Williams
District Attorneys of the State of Texas
124 W. Beauregard
San Angelo, Texas 76903-5850

OR99-2896

Dear Ms. Williams:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129565.

The Tom Green County D.A.'s Office received a request for a tape recording used as evidence in the criminal trial of a named individual, and the incident report regarding that same individual's arrest. You explain that your office intends to release the requested audiotape, but that the requested report is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the representative sample of documents submitted.¹

In seeking to withhold the requested report, you rely on an interpretation of section 552.108 of the Government Code as articulated in *Holmes v. Morales*.² However, since the issuance of that case, effective September 1, 1997, the Seventy-fifth Legislature amended section 552.108. Thus, *Holmes* is no longer applicable to requests for law enforcement records under the Public Information Act. Amended section 552.108 now excepts from required public disclosure:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

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

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²924 S.W.2d 920 (Tex. 1996).

(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; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

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

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

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why 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). We have reviewed your section 552.108 argument and conclude that you have not shown how release of the requested report would interfere with the detection, investigation, or prosecution of crime. Moreover, you have not shown how any subsection of section 552.108 applies to except the report. Thus, you must release the report to the extent that the information is not confidential by law.

We note that the report contains several driver's license numbers. Section 552.130 excepts information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold the driver's license numbers contained in the report in accordance with the marked redactions.

Furthermore, the report contains several social security numbers. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception applies to confidentiality provisions such as the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). This provision makes social security numbers confidential if they 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. *See* Open Records Decision No. 622 (1994). Therefore, if the social security numbers contained in the report meet the criteria of section 405(c)(2)(C)(viii)(I), then they are confidential under this provision as encompassed by section 552.101. However, the requestor has a special right of access to information sought on behalf of his client. *See* Gov't Code § 552.023 (a person or a person's authorized representative has special right of access, beyond right of general public, to information excepted from disclosure by laws intended to protect that person's privacy interests). Therefore, even if the social security numbers contained in the report fall under section 405(c)(2)(C)(viii)(I), the social security number of the requestor's client must be released.

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,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 129565

Encl: Submitted documents

cc: Mr. Bradley C. Miles
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(w/o enclosures)