



December 14, 1999

Mr. Mark A. Flowers
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR99-3628

Dear Mr. Flowers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 131279.

The City of Midland (the “city”) received a request for the police report relating to a specified incident. You claim that the report is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.108(a) of the Government Code provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] 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; or

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

A governmental body claiming an exception under section 552.108 must sufficiently explain, if the responsive information does not furnish the explanation on its face, how and why section 552.108 is applicable. *See* Gov't Code §§ 552.108(c), 552.301(b); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state only that "release of the information could hinder the investigation or prosecution of the underlying crime." You do not state that the requested information pertains to an ongoing criminal investigation or prosecution or sufficiently show how release of the information would interfere with the investigation, *see* Gov't Code § 552.108(a)(1), that it relates to a criminal investigation whose result was other than a conviction or deferred adjudication, *see id.* § 552.108(a)(2), or that it was prepared by an attorney representing the state in anticipation of or preparation for criminal litigation or reflects the mental impressions or legal reasoning of such an attorney. *See id.* § 552.108(a)(3). Consequently, you have not demonstrated the applicability of section 552.108 to the requested report, and the city may not withhold it from public disclosure under section 552.108.

You also claim that the requested report includes information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(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

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

The bill that added section 552.130 to the Government Code also enacted chapter 730 of the Transportation Code. *See* Act of May 29, 1997, 75th Leg., R.S., ch. 1187, § 1, 1997 Tex. Gen. Laws 4575. The purpose of the legislation was to bring Texas into compliance with the

federal Driver's Privacy Protection Act and to protect individual privacy interests by restricting the use of driver's license and motor vehicle information. *See* Senate Comm. on State Affairs, Bill Analysis, S.B. 1069, 75th Leg., R.S. (1997); *see also* Transp. Code § 730.002 (purpose of Motor Vehicle Records Disclosure Act is to protect individual's personal privacy by prohibiting disclosure and use of personal information in motor vehicle records). Consequently, we believe that section 552.130 is intended to protect personal privacy interests.

Section 552.023 of the Government Code grants a special right of access to information relating to a person whose privacy interests in that information are protected from disclosure to the general public. Section 552.023 provides as follows:

- (a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.
- (b) A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under . . . chapter [552 of the Government Code] but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.

Here, the only driver's license number that we are able to locate in the requested report is that of the requestor. Because of the special right of access granted by section 552.023, the city may not withhold the requestor's own driver's license number from him under section 552.130. Similarly, the only motor vehicle information that we are able to identify in the requested report is the license plate number of the vehicle that the requestor was driving when he was arrested. If the requestor has an ownership interest in that vehicle, or if he is the authorized representative of the owner of the vehicle, then he has a special right of access to information relating to that vehicle's license plate number under section 552.023, and the city may not withhold the information from him under section 552.130. If not, then the license plate number should be redacted prior to release of the report.

You also note that the requested information includes social security numbers and state that "federal law makes confidential any social security number obtained or maintained by any authorized person, including a city[.]" As a general proposition, a social security number or "related record" may be excepted from disclosure under section 552.101 of the Government Code in conjunction with 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). Once again, however, the only social security number that we can find in the requested report is that of the

requestor. The requestor has a special right of access to a record of his own social security number, pursuant to section 552.023, and it may not be withheld from him under section 552.101 in conjunction with federal law.

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.

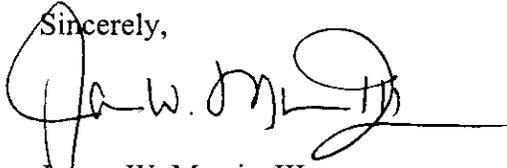
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cwt

Ref: ID# 131279

Encl. Submitted documents

cc: Mr. Kerry T. Goosby
700 N. Dixie
Odessa, Texas 79761
(w/o enclosures)