



January 9, 2001

Lieutenant Jim Koch
Amarillo Police Department
City of Amarillo
200 East 3rd
Amarillo, Texas 79101-1514

OR2001-0100

Dear Lt. Koch:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142974.

The Amarillo Police Department (the "department") received a written request for a particular offense report, including photographs. You contend that the requested information is exempted from required public disclosure pursuant to section 552.108 of the Government Code.

Section 552.108(a) of the Government Code exempts 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:

- (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.

You have not raised any specific subsection of section 552.108(a) with regard to the information at issue. A governmental body claiming an exception from disclosure under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the exception applies. *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

Please note that the protections offered by subsections 552.108(a)(1) and 552.108(a)(2) are, generally speaking, mutually exclusive. Section 552.108(a)(1) generally applies to information held by law-enforcement agencies that pertains to pending criminal investigations or prosecutions. Section 552.108(a)(2) protects law-enforcement records that pertain to criminal investigations and prosecutions that have concluded in a result other than a criminal conviction or deferred adjudication.

In this instance, you have provided this office with conflicting information. You state that "the case has not been adjudicated" and that "[r]elease of this information could interfere with the prosecution of this case." However, the records at issue indicate that this case has been closed because the district attorney's office has refused to prosecute. Because we cannot reconcile this apparent conflict, we are unable to conclude that either subsection 552.108(a)(1) or 552.108(a)(2) is applicable in this instance. Consequently, the department may not withhold the information from the requestor pursuant to either subsection 552.108(a)(1) or 552.108(a)(2) of the Government Code. Because you have raised no other exception to required public disclosure, we conclude that the department must release the requested information in its entirety, with the following exceptions.

The records at issue contain two driver's license numbers. Section 552.130(a)(1) of the Government Code requires the department to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Accordingly, the department must withhold the Texas driver's license numbers pursuant to section 552.130(a)(1) of the Government Code.

The records at issue also contain individuals' social security numbers. 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)(viii)(D), 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. However, this office has 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)(viii)(I). We therefore conclude that these numbers must be released.¹

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).

¹We 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 these numbers were not obtained nor are maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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 A. Pearle
Assistant Attorney General
Open Records Division

MAP/RWP/seg

Ref: ID# 142974

Encl. Submitted documents & photographs

cc: Mr. Rick Keffler
P.O. Box 50825
Amarillo, Texas 79159
(w/o enclosures)