



April 2, 2001

Lieutenant Arturo Valdez
City of McAllen Police Department
1501 Pecan Boulevard
McAllen, Texas 78501

OR2001-1298

Dear Lt. Valdez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145534.

The McAllen Police Department (the "department") received an open records request for a particular offense report. You contend that, except for the categories of information specifically made public in *Houston Chronicle Publishing Company 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), the requested information is excepted from required public disclosure pursuant to either section 552.108(a)(1) or 552.108(b)(1) of the Government Code.

A governmental body claiming an exception from disclosure under section 552.108(a)(1) or 552.108(b)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *Ex parte Pruitt*, 551 S.W. 2d 706 (Tex. 1977). For example, this office applies section 552.108(a)(1) when a requested offense report pertains to an ongoing investigation or prosecution and releasing the offense report would interfere with that investigation.

In this case, you have provided this office conflicting information, and we are unable to conclude that either section 552.108(a)(1) or 552.108(b)(1) is applicable in this instance. The report at issue states that the case is closed and that no criminal charges will be filed. However, you state that "the case investigation is ongoing." In light of the fact that the records before us indicate that the investigation is closed, it is not clear to this office whether

the investigation is actually ongoing. We cannot reconcile this apparent conflict. Consequently, the department may not withhold the information from the requestor based on either section 552.108(a)(1) or 552.108(b)(1) 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.

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." Also, section 552.130(a)(2) of the Government Code requires the withholding of information relating to "a motor vehicle title or registration issued by an agency of this state." Consequently, the department must withhold the Texas driver's license numbers and vehicle registration information that we have marked in brackets pursuant to section 552.130.¹

The records at issue also contain certain 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)(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, which excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

It is not apparent to us that the social security numbers at issue here 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 405(c)(2)(C)(viii)(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 and are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the department must release the requested information in its entirety except for 1) the driver's license numbers and vehicle registration information that we have marked and 2) any social security number obtained or maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

¹Please note that the requestor has a special right of access to his own section 552.130 information pursuant to section 552.023 of the Government Code.

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).

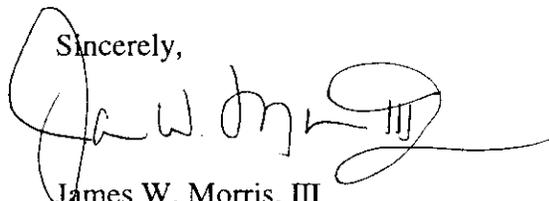
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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,

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

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

JWM/RWP/seg

Ref: ID# 145534

Encl. Submitted documents

cc: Mr. Santiago Lamas
2200 Kendlewood
McAllen, Texas 78501
(w/o enclosures)