



April 30, 2001

Mr. Charles M. Allen, II
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2001-1757

Dear Mr. Allen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146632.

The Richardson Police Department (the "department") received a written request for "all records, 911 calls, and reports" pertaining to a certain address during a specified time period. You have submitted to this office as responsive to the request records from ten offense reports. You state that the department has released some responsive information to the requestor. You contend, however, that other requested information is excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code.

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 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," 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. One of the offense reports at issue, Service Number 01-003366, relates to an investigation of alleged child abuse. Section 261.201(a) of the Family Code provides as follows:

- (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Service Number 01-003366 clearly comes within the ambit of section 261.201, and none of that section's release provisions apply in this instance. Accordingly, the department must withhold this report in its entirety pursuant to section 552.101 of the Government Code. *But see* Fam. Code § 261.201(b) (provision for court ordered access), (f) (limited right of access to records held by Department of Protective and Regulatory Services).

You contend that the remaining records at issue are excepted from disclosure under either subdivision 552.108(a)(1) or 552.108(a)(2) of the Government Code. Section 552.108(a)(1) generally applies to information held by law-enforcement agencies that pertains to pending criminal investigations or prosecutions. Based on your representation that the records pertaining to Service Number 00-093847 relate to a pending criminal prosecution, we conclude that in this instance you have met your burden of demonstrating the applicability of section 552.108(a)(1) to those records. The department therefore may withhold those records pursuant to section 552.108(a)(1) of the Government Code.

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. You contend that the remaining offense reports are excepted from public disclosure pursuant to section 552.108(a)(2) because no criminal charges were brought in connection with those investigations, which have been completed without an arrest. Based on your representations, we conclude that the department may withhold most of information contained in the remaining offense reports pursuant to section 552.108(a)(2).

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). This provision requires the release of "basic information" in accordance with *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). We note that although the department has released some information to the requestor, our review of the released documents revealed that that release did not comport with the requirements of section 552.108(c) and *Houston Chronicle*. For your convenience and that of the requestor, we have provided as an attachment to this ruling a list of the categories of information that the department must release from each of the offense reports at issue. We particularly note

that the department must release a detailed description of each incident giving rise to each report.

We agree that the department must withhold pursuant to section 552.130(a)(1) of the Government Code “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 all Texas driver’s license numbers and all Texas license plate numbers and registration information contained in the records at issue pursuant to section 552.130.

Finally, we note that among the documents you seek to withhold is criminal history record information (“CHRI”) obtained from the Department of Public Safety. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose. Gov’t Code § 411.089(b)(1). Consequently, the CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F. The department therefore must withhold the CHRI contained in the records at issue.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;

¹Because we resolve your request under sections 552.101, 552.108, and 552.130, we need not address the applicability of the other exception you raised.

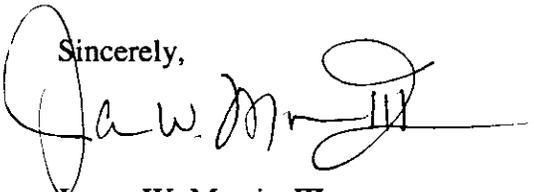
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things 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', with a large, stylized initial 'J' and 'M'.

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

JWM/RWP/seg

Ref: ID# 146632

Encl. Submitted documents

cc: Ms. Colleen Vinsonhaler
P.O. Box 832614
Richardson, Texas 75083
(w/o enclosures)