



October 1, 2001

Mr. C. Gaffney Phillips
Attorney for the City of Livingston
P.O. Box 1093
Livingston, Texas 77351

OR2001-4381

Dear Mr. Phillips:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152641.

The City of Livingston (the "city"), which you represent, received requests for:

- (1) Preston Street complaints filed before and after a May 5, 2000 incident;
- (2) specific information concerning the May 5th incident and the personnel involved;
- (3) lists of Livingston Police Department officers and administrative employees, including their gender, ethnicity, and age, from 1995 to the present;
- (4) the biographies, resumes, degrees, professional accomplishments, applications, oaths, securities, and financial statements of the city's mayor and city manager, as well as certain city council members;
- (5) campaign contribution reports filed by the mayor and city council members from 1995 to the present;
- (6) a list of all persons employed by the city, including their gender, ethnicity, and age, from 1995 to the present;
- (7) municipal depositories from September 1987 to the present;
- (8) personal or surety bonds from banks;

(9) the total amount of city deposits from September 1987 to the present; and

(10) the city's financial statements from January 1, 1987 to the present.

You claim that the requested information concerning the May 5, 2000 incident is excepted from disclosure under section 552.108 of the Government Code. You also contend that some of the information concerning the city manager is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. Because you seek to withhold information responsive to only a portion of the requests, we assume you have released the remainder of the responsive information. To the extent you have not released the remainder of the responsive information, you must do so now. *See* Gov't Code §§ 552.021, .301, .302. With respect to the information you have submitted and seek to withhold, we have considered the exceptions you claim and reviewed the submitted information.

We begin by noting that a prior ruling, Open Records Letter No. 2001-3950 (2001) answers your questions concerning whether information in the city manager's application for employment is excepted from disclosure. In that decision, we determined that a portion of the city manager's application was excepted from disclosure under section 552.130 and other parts of the application could be excepted from disclosure under section 552.117, depending on whether the city manager made a timely election under section 552.024. As long as the facts and circumstances surrounding our ruling in Open Records Letter No. 2001-3950 (2001) (enclosed) have not changed, you may rely upon that ruling as a previous determination concerning the public availability of the city manager's employment application under section 552.301 of the Government Code and thus need not ask this office again for a decision concerning the city manager's application. *See* Open Records Decision No. 673 (2001).

Next, we consider your argument that the information concerning the May 5, 2000 incident is excepted from disclosure under section 552.108. Section 552.108(a) excepts from 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." 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 the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the submitted police reports relate to pending criminal prosecutions. We therefore agree that you have shown that the release of most the police reports would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. 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) (court delineates law enforcement interests that are present in active cases). We have marked these reports, which the city may withhold under section 552.108(a)(1) except as discussed below. We note, however, that one of the submitted reports indicates that the defendant pleaded guilty and was sentenced for assault

prior to the date on which the city received the instant request for information. Therefore, this report indicates on its face that the case is no longer pending. Furthermore, you do not explain, nor is it apparent, how this report relates to the pending cases. Therefore, we find that the city may not withhold the report relating to closed case under section 552.108.

With respect to the reports that are generally excepted under section 552.108, we note that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. 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); Open Records Decision No. 127 (1976). Thus, the city must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Although section 552.108(a)(1) authorizes the city to withhold the remainder of the police reports from disclosure, the city may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

With respect to the report that is not subject to section 552.108(a)(1), we note that the report contains information that is excepted under section 552.130 and may be excepted under section 552.101. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

The city must withhold the Texas driver's license number contained in the report, which we have marked, under section 552.130.

The report also contains a social security number that may be excepted from disclosure under section 552.101. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that 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). We have no basis for concluding that the social security number in the report is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, which we have marked, the city should ensure that it was not obtained or is not maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, as long as the facts and circumstances surrounding our previous ruling have not changed, the city may rely on Open Records Letter No. 2001-3950 (2001) in determining whether portions of the city manager's application are excepted from public disclosure. With the exception of basic information, the city may withhold some of the submitted reports, which we have marked, under section 552.108(a)(1) of the Government Code. The city must release the remaining police report, with the exception of information excepted from disclosure under section 552.130 of the Government Code or confidential under the federal Social Security Act.

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).

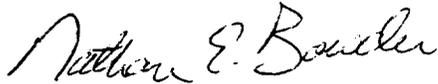
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dept. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 152641

Enc: Submitted documents
Open Records Letter Ruling No. 2001-3950 (2001)

c: Mr. Jim Thompson
African American Legal Defense Group
P.O. Box 91212
Houston, Texas 77291-1212
(w/o enclosures)