



February 27, 2002

Mr. Gary A. Scott
Assistant City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2002-0946

Dear Mr. Scott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159065.

The Conroe Police Department (the "department") received a request for "any information" regarding a specified incident. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code states that 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 release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). You inform us that the information at issue pertains to a pending criminal investigation. We therefore believe that the release of the information "would interfere with the detection, investigation, or prosecution of crime." *Id.*

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *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). Thus, with the exception of the basic front page offense and arrest information, the department may withhold the requested information from disclosure based on section 552.108(a)(1). We note that the department has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

However, we further note that certain information contained in the information at issue is excepted from disclosure under section 552.101 of the Government Code in conjunction with common law privacy. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The doctrine of common law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Accordingly, we have marked information that the department must withhold pursuant to section 552.101 and the common law right of privacy. The department must release all other basic, front page offense report information.

You claim that social security numbers contained in the submitted information are excepted from disclosure under section 552.101. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 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). These amendments 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 *id.* You claim that the social security numbers in the submitted information fall under the federal Social Security Act because they were obtained pursuant to section 411.086 of the Government Code. Section 411.086 was effective September 1, 1993. The provision contemplates rules that the Department of Public Safety ("DPS") shall adopt in regard to requests for criminal history information. Section 411.086(b)(2) states that such rules "may require a person requesting criminal history information about an individual to submit to [DPS] one or more of the following: . . . (E) any known identifying number of the individual, including social security number. . . ."

You state that the social security numbers contained in the information at issue are "obtained and maintained, in part, to obtain criminal history information from the Department of Public Safety." However, you do not specifically state whether DPS actually requires or required the department to submit the social security numbers at issue in order to request criminal history information. We find that, if the city obtained or maintains the social security numbers at issue in order to request criminal history information from DPS, and if DPS actually requires or required the city to submit the social security number with its request for criminal history information, then such social security numbers are confidential under section 552.101 of the Government Code in conjunction with federal law.

Finally, the submitted information contains driver's license numbers. 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[.]

The department must withhold the Texas driver's license numbers we have marked under section 552.130.

In summary, the department must withhold from disclosure the information that we have marked under section 552.101 of the Government Code in conjunction with the common law right of privacy, and under section 552.130. Social security numbers in the submitted information may be confidential under section 552.101 in conjunction with federal law. With the exception of basic front page offense and arrest information, the department may withhold the remaining information under section 552.108.

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

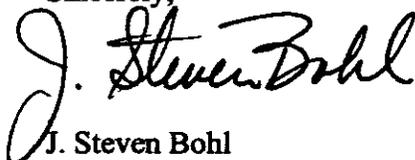
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/er

Ref: ID# 159065

Enc: Submitted documents

c: Mr. Leonard Worsham, President
KIA of Conroe
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(w/o enclosures)