



August 5, 2002

Mr. G. Chadwick Weaver  
First Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR2002-4283

Dear Mr. Weaver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166671.

The City of Midland (the "city") received two written requests from the same requestor for police records pertaining to a named individual. Both requests seek records pertaining to a particular incident, while one of the requests also seeks all police records pertaining to the individual. You contend that the requested information is excepted from required public disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code.

You contend that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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* it is of no legitimate concern to the public. *Id.* at 683-85.

We note that to the extent the requestor is seeking police records, other than the specifically requested incident report, in which the named individual is named as either an arrestee or a suspect, the requestor is asking the city to compile that individual's criminal history. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See* Open Records Decision Nos. 616 (1993), 565 (1990). Accordingly, with the exception of the

specifically requested report, the city must withhold any offense report that references the named individual as a suspect or arrestee pursuant to section 552.101 in conjunction with common-law privacy.

You contend, however, that report numbers 0111090053 and 9907280047 are excepted from required public disclosure pursuant to sections 552.108(a)(2) and (b)(2) of the Government Code. Section 552.108(a)(2) of the Government Code excepts from required public disclosure “[i]nformation held by a law enforcement agency . . . that deals with the detection, investigation, or prosecution of crime . . . if . . . 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.” Because you inform us that these reports pertain to criminal investigations that did not result in a conviction or deferred adjudication, we conclude that the city may withhold most of report numbers 0111090053 and 9907280047 pursuant to section 552.108(a)(2) of the Government Code. *See* Open Records Decision No. 372 at 4 (1983) (where incident involving criminal conduct remains under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of related information).

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). The city therefore must release these types of information, including a detailed description of the alleged crime, 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).

You also seek to withhold police report number 0109090048, which pertains to the incident specifically referenced in the records requests, pursuant to section 552.108(a)(2). We note that although you state that this police investigation has concluded and did not result in a conviction or deferred adjudication, this report contains a notation that the named individual had “pleaded to probation.” A criminal defendant may be placed on community supervision where 1) criminal proceedings are deferred without an adjudication of guilt or 2) the defendant has been convicted and the resulting sentence is suspended in whole or in part. *See* Code Crim. Proc. art. 42.12, § 2(2) (defining “community supervision”).

In light of the fact that the records before us indicate that the investigation resulted in either a conviction or a deferred adjudication, we cannot reconcile this apparent conflict with your section 552.108(a)(2) claim. Consequently, the city may not withhold the supplemental report on case number 0109090048 from the requestor based on either section 552.108(a)(2) or section 552.108(b)(2) of the Government Code. Because you have raised no other exception to required public disclosure, we conclude that the department must release the report on case number 0109090048 in its entirety, with the following exceptions.

We note that police report number 0109090048 contains individuals' social security numbers. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code, which also excepts from required public disclosure information made confidential by other statutes. Some social security numbers may be made confidential under 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 contend that the social security numbers 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. This 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. . . ."

However, you do not specifically state whether DPS actually requires or required the city 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.

On the other hand, to the extent the social security information was obtained or is maintained by the city solely under a policy or practice to identify individuals, we advise that such a policy or practice does not constitute a law enacted on or after October 1, 1990 authorizing the city to obtain or maintain a social security number. In that case, we have no basis for concluding that any of the social security numbers in report number 0109090048 are 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 any social security numbers, the city should ensure that no such information was obtained or is maintained pursuant to any provision of law enacted on or after October 1, 1990.

Finally, section 552.130(a)(1) of the Government Code requires the city 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 city must withhold the Texas driver's

license numbers contained in report number 109090048 pursuant to section 552.130(a)(1) of the Government Code.

In summary, the city must not release any records, to the extent they exist, that identify the named individual as an arrestee or suspect other than the specifically requested incident report. Most of incident report numbers 0111090053 and 9907280047 may be withheld pursuant to section 552.108(a)(2), but the city must release all "basic information" from these reports. The city may must release incident report number 0109090048, but must withhold Texas drivers' license numbers pursuant to section 552.130 and any social security numbers that are made confidential under federal law.

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).

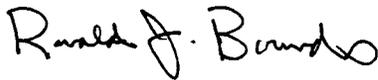
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/RWP/sdk

Ref: ID# 166671

Enc: Submitted documents

c: Ms. Ivy Roberts  
614 West Avenue C  
Muleshoe, Texas 79347-3337  
(w/o enclosures)