



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

May 13, 2003

Mr. Robert Franklin
Chief of Police
Bartlett Police Department
P.O. Drawer H
Bartlett, Texas 76511

OR2003-3216

Dear Mr. Franklin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180949.

The Bartlett Police Department (the "department") received a request for information relating to the requestor. You state that you have released some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

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 state "two of [the three submitted incident reports] are ongoing investigations." You indicate that one of the incident reports, BTPD02000192, relates to an ongoing investigation being conducted by the department into a theft allegation. Based on your argument, we agree that the release of incident number BTPD02000192 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 note, however, 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, you 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 you to withhold the remainder of incident number BTPD02000192 from disclosure, you 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.

You indicate that another incident report, BTPD02000243, relates to an ongoing investigation being conducted by the Williamson County Sheriff's Department, and that "[a]ny disclosure of information in this case could hinder their investigation." We note that section 552.108 may be invoked by any proper custodian of information which relates to an investigation or prosecution. *See, e.g.*, Open Records Decision Nos. 474 (1987), 372 (1983); *see also* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108). However, you have not represented that the Williamson County Sheriff's Department, which is the investigative agency, has requested that this information be withheld. Accordingly, you may not withhold incident number BTPD02000243 from disclosure based on section 552.108(a)(1).

Because you state that only two of the three submitted incident reports pertain to ongoing investigations, we understand you to represent that incident number BTPD020000002 does not relate to an ongoing investigation. Nevertheless, you state that you wish to withhold incident number BTPD020000002 under section 552.108(a) "[s]ince there is a statute of limitation to consider in this case." Based on the information you have provided, we find that you have failed to demonstrate that incident number BTPD020000002 relates to an ongoing investigation or that release of the incident report would otherwise interfere with a criminal investigation or prosecution. Consequently, the department may not withhold incident number BTPD020000002 pursuant to section 552.108 of the Government Code.

We note, however that the information not otherwise excepted under section 552.108 includes information subject to sections 552.101 and 552.130. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section makes confidential information protected by statute. Criminal history record information ("CHRI") obtained from the National Crime Information Center ("NCIC") or the Texas Crime Information Center ("TCIC") is confidential under federal law and subchapter F of chapter 411 of the Government Code. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. §20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was

given.") and (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 of the Government Code provides that any CHRI maintained by the Texas Department of Public Safety (the "DPS") is confidential. *See* Gov't Code §411.083(a); *see also id.* §§ 411.106(b), .082(2) (defining criminal history record information). Similarly, CHRI obtained from the DPS pursuant to statute also is confidential and may be disclosed only in very limited instances. *See id.* §411.084; *see also id.* §411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Thus, any criminal history information that was obtained from the NCIC or TCIC networks must be withheld from disclosure under section 552.101 of the Government Code. We note, however, that an individual can obtain his or her own CHRI from DPS. Gov't Code § 411.083(b)(3).

We next note that the submitted information includes a social security number that may be confidential under federal law. A social security number may be withheld from disclosure in some circumstances 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.* We have no basis for concluding that the social security numbers in the submitted information are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act (the "Act") on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

We next note that some of the information is subject to section 552.130 of the Government Code. 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[.]

Accordingly, you must withhold from disclosure the Texas driver's license numbers we have marked under section 552.130 of the Government Code.¹

In summary, with the exception of basic information, the department may withhold incident number BTPD02000192 from disclosure based on section 552.108(a)(1). CHRI must be withheld under section 552.101 in conjunction with chapter 411 of the Government Code. A social security number may be confidential under section 552.101 in conjunction with federal law. We have marked Texas driver's license numbers the department must withhold under section 552.130. The remaining information must be released to the requestor.

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).

¹We note that the submitted information also includes a Texas driver's license number and Texas license plate number relating to the requestor. As section 552.130 is designed to protect an individual's privacy interest, the requestor has a special right of access to her own information. *See* Gov't Code § 552.023. If the department receives a subsequent request for this same information from a different individual, you should seek another ruling from this office at that time.

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 Dep't of Pub. 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 180949

Enc: Submitted documents

c: Ms. Lana Hill
P.O. Box 95
Bartlett, Texas 76511
(w/o enclosures)