



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 16, 2003

Ms. Lisa M. Salinas
Custodian of Records
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2003-4923

Dear Ms. Salinas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184339.

The Baytown Police Department (the "department") received a request for "incident reports generated in the last two years involving [a specified address]." The requestor subsequently clarified that he was seeking information pertaining to two case reports. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (stating that when governmental bodies are presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). You claim that portions of the requested information are excepted from disclosure pursuant to sections 552.108, 552.117, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.117 of the Government Code. We note that section 552.117(a)(2) excepts from disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members, regardless of whether the peace officer made an election under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, we conclude that the department must withhold the information that we have marked pursuant to section 552.117(a)(2) of the Government Code. *See* Open Records Decision No. 670 at 5-6 (2001) (governmental body "may withhold home addresses and home telephone numbers of peace officers, in addition to social security numbers and information that reveals whether the peace officer or security officer has family members, without the necessity of requesting an Attorney General decision as to whether the exception under section 552.117(2) applies").

You also claim that portions of the submitted information are excepted from disclosure pursuant to section 552.1175 of the Government Code. Section 552.1175 provides in pertinent part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a), (b). Accordingly, we conclude that the department must withhold the information that we have marked pursuant to section 552.1175 to the extent that the officer with whom this information is associated elects confidentiality for this information with the department under section 552.1175 of the Government Code.

We note that the remaining submitted information contains social security numbers that may be excepted from disclosure pursuant to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). However, information that is responsive to a request may not be withheld from disclosure under section 552.117(a)(1) if the official or employee did not request confidentiality for this information in accordance with section 552.024 or if the request for confidentiality under section 552.024 was not made until after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Accordingly, we conclude that the department must withhold the social security number information that we have marked pursuant to section 552.117(a)(1) of the Government Code to the extent that the employee associated with each social security number timely elected confidentiality for it under section 552.024 prior to the department's receipt of this request.

Nevertheless, we note that these social security numbers, as well as another social security number, may be excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I).¹ These particular amendments make confidential social security numbers and related records that are obtained or 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). The department has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain these social security numbers. Therefore, we have no basis for concluding that they are confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing these social security numbers, the department should ensure that they were not obtained or are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In addition, you claim that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, we conclude that the department must withhold the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code.

Finally, you claim that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) protects records pertaining to criminal investigations or prosecutions that have concluded in a final result other than conviction or a deferred adjudication. *See* Gov't Code § 552.108(a)(2). You state that the submitted information associated with case number 02-51674 concerns an investigation of a criminal assault that did not result in a conviction or deferred adjudication. Thus, we understand from your representation that the department contends that the investigation associated with this particular case concluded in a final result other than conviction or deferred adjudication. Accordingly, we find that section 552.108(a)(2) is applicable to case number 02-51674.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *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), which includes a detailed description of the offense. *See* Open Records Decision No. 127 (1976)

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes.

(summarizing types of basic information that must be made available to public). Accordingly, with the exception of basic information that must be released to the requestor from throughout the information in case number 02-51674 that the department seeks to withhold under section 552.108, we conclude that the department may withhold the remaining information in this report that it seeks to withhold under section 552.108 pursuant to section 552.108(a)(2) of the Government Code. We note, however, that the department maintains the discretion to release all or part of this particular information that is not otherwise confidential by law. *See* Gov't Code § 552.007.

In summary, the department must withhold the information that we have marked pursuant to section 552.117(a)(2) of the Government Code. The department must withhold the information that we have marked pursuant to section 552.1175 to the extent that the officer with whom this information is associated elects confidentiality for this information with the department under section 552.1175 of the Government Code. The department must withhold the social security number information that we have marked pursuant to section 552.117(a)(1) of the Government Code to the extent that the employee associated with each social security number timely elected confidentiality for it under section 552.024 prior to the department's receipt of this request. Otherwise, those particular social security numbers, as well as another social security number which we have marked, may be confidential under federal law. The department must withhold the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code. With the exception of basic information that must be released to the requestor from throughout the information that the department seeks to withhold in case number 02-51674 under section 552.108, the department may withhold this information pursuant to section 552.108(a)(2) of the Government Code. The department must release the remaining submitted information 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

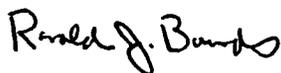
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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).

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 184339

Enc. Marked documents

c: Mr. Matthew Cook
The Baytown Sun
1301 Memorial Drive
Baytown, Texas 77520
(w/o enclosures)