



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 14, 2003

Ms. Leona Clay
Administrative Assistant
Harker Heights Police Department
120 South Harley Drive
Harker Heights, Texas 76548

OR2003-8189

Dear Ms. Clay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191073.

The City of Harker Heights Police Department (the "department") received a request for copies of (1) seven specified offense reports, (2) any offense reports listing either of two named individuals "as the reporting party and the other as the suspect," and (3) any offense reports from January 1, 1996 through December 31, 1999 listing a named individual as a suspect. You state that you have released much of the requested information to the requestor. However, you claim that the remainder of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you state that report number 8446-97 was the subject of Open Records Letter No. 2001-3524 (2001). To the extent that the law, facts, or circumstances on which that ruling was based remain unchanged, you may rely on our previous ruling with respect to withholding the exact information that was the subject of the previous ruling. *See* Gov't Code § 552.301(a); Open Records Decision 673 at 6-7 (2001) (attorney general decision constitutes first type of previous determination under section 552.301(a) where (1) precisely the same records or information previously were submitted under section 552.301(e)(1)(D), (2) same governmental body previously requested and received ruling, (3) prior ruling concluded that same records or information are or are not excepted from disclosure, and (4) law, facts, and circumstances on which prior ruling was based have not changed).

We now turn to your arguments concerning the submitted information. You assert that case numbers 3664-97, 18902-99, and 10294-97 are excepted from disclosure by section 552.108 of the Government Code. Section 552.108 provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) 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[.]

Gov't Code § 552.108(a)(1), (2). Generally speaking, subsections 552.108(a)(1) and (a)(2) are mutually exclusive. Subsection 552.108(a)(1) protects information that pertains to a pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information relating to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication. A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code § § 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). On the other hand, a governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. In this instance you claim that the submitted information is excepted from disclosure under 552.108 because "the release of the information would interfere with the detection, investigation or prosecution of crime only in relation to an investigation which has not resulted in a conviction or deferred adjudication." Because you have provided this office with conflicting arguments and have not explained how either argument pertains to the offense reports at issue, we are uncertain whether you are claiming section 552.108(a)(1) or 552.108(a)(2). Thus, we find that you have not demonstrated the applicability of section 552.108. Therefore, the department may not withhold any of the submitted information under section 552.108.

We note, however, that portions of report numbers 10294-97 and 8442-97 are confidential under section 552.101 of the Government Code. Section 552.101 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 confidentiality provisions such as section 261.201 of the Family Code, which provides in pertinent part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Some of the information included in report numbers 10294-97 and 8442-97 consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. Because you have not cited any specific rule that the investigating agency has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, the information that we have marked is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).

We note that report number 18902-99 contains a social security number. 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.* We have no basis for concluding that the social security number in the file 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, 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.

Finally, we note that report numbers 03664-97, 10294-97, 18902-99, and 8442-97 contain information that is confidential under 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[.]

You must withhold the Texas driver's license numbers and license plate number we have marked under section 552.130.

In summary, you may rely on our prior ruling to withhold report number 8446-97. You must withhold the portions of report numbers 10294-97 and 8442-97 that we have marked under section 552.101 in conjunction with section 261.201 of the Family Code. The social security number in report number 18902-99 may be confidential under federal law. You must withhold the information we have marked in report numbers 03664-97, 10294-97, 18902-99, and 8442-97 under section 552.130. You must release the remaining 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).

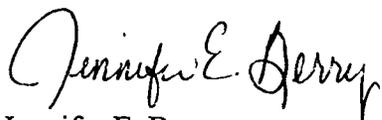
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 191073

Enc: Submitted documents

c: Ms. Julie Oliver
The Women's Advocacy Project
P.O. Box 833
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(w/o enclosures)