



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 24, 2004

Mr. Juan E. Gonzalez  
Law Office of Juan E. Gonzalez  
3110 East Business Highway 83  
Weslaco, Texas 78596

OR2004-5173

Dear Mr. Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204018.

The City of Mercedes (the "city"), which you represent, received a request for information pertaining to calls for service by two named individuals during a specified time period. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We also understand you to assert that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that other statutes make confidential. You appear to raise section 552.101 in conjunction with section 261.201 of the Family Code. Chapter 261 of the Family Code is applicable to information that relates to reports or investigations of alleged or suspected child abuse or neglect. Section 261.201 provides in 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.

Fam. Code § 261.201(a).

You assert that the submitted reports concern a domestic disturbance and that “the Family Code excepts from disclosure any information dealing with the domestic violence.” We have reviewed the submitted information and conclude that none of the information at issue comes within the scope of section 261.201. *See* Fam. Code § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor to Fam. Code § 261.201). Therefore, the city may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

We turn now to your arguments regarding section 552.108 of the Government Code. This section provides in part:

(a) 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:

(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[.]

....

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

(2) the internal record or notation relates to law enforcement only in relation to an investigation that *did not* result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2) (emphasis added). Generally speaking, subsections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of

subsections 552.108(a)(2) and 552.108(b)(2). Subsections 552.108(a)(1) and 552.108(b)(1) protect information that pertains to on-going criminal investigation and prosecution efforts. In contrast, subsections 552.108(a)(2) and 552.108(b)(2) protect information that relates to concluded criminal investigations or prosecutions that did not result in conviction or deferred adjudication.

In addition, subsections 552.108(a) and 552.108(b) generally apply to different types of information. Subsection 552.108(a) applies to records such as offense reports that pertain to specific investigations or prosecutions. On the other hand, subsection 552.108(b) generally applies to internal records such as detailed police procedures that are not commonly known. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State”); Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under law enforcement exception), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known).

A governmental body that raises section 552.108 must reasonably explain how and why this exception is applicable. *See Gov’t Code § 552.301(e)(1)(A); Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). In raising subsection 552.108(a)(1) or (a)(2), a governmental body must advise this office of the status of the particular investigation or prosecution at issue. To prevail on its claim that section 552.108(b)(1) exempts information from disclosure, a law-enforcement agency must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor)*. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. *See Open Records Decision No. 409 at 2 (1984) (construing statutory predecessor)*.

In this instance, you state that “[t]he requested information set forth in Exhibit C deals with a criminal case that has not yet been tried and this investigation has not yet resulted in conviction or deferred adjudication.” As responsive to this request, you have submitted six offense reports from the years 1998, 2000, and 2001 as well as six reports pertaining to calls for service from 2001. You have not identified any particular report as relating to an open or pending investigation, nor have you indicated which, if any, of these reports pertains to a case that concluded in a result other than conviction or deferred adjudication. We note that the statute of limitations has run for some of the offenses at issue but has not run for other offenses.<sup>1</sup> *See Penal Code § 28.03 (providing that criminal mischief can be felony); Code Crim. Proc. arts. 12.01(6) (felonies not specifically listed subject to three year limitations period), 12.02 (misdemeanors subject to two year limitations period); cf. Code Crim. Proc.*

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<sup>1</sup>You do not inform this office that any criminal charges were filed within the limitations period.

art. 12.01(1)(F) (arson subject to ten year statute of limitations). Having considered your arguments and the submitted information, we find that you have failed to establish the applicability of section 552.108 to any of the information at issue, and none of it may be withheld on that basis. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

We note, however, that the submitted records include information relating to Texas-issued motor vehicle records. Section 552.130 of the Government Code excepts from disclosure "information [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." Gov't Code § 552.130(a)(1), (2). We have marked the information that the city must withhold pursuant to this exception.

In addition, we note that the submitted information includes social security numbers, which may be confidential under federal law. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information that another statute makes confidential. In 1990, the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), was amended to 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). We have no basis for concluding that the social security numbers at issue 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 Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that such information is not obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

In summary, we have marked Texas-issued motor vehicle record information that must be withheld under section 552.130. Social security numbers may be confidential under federal law. The remaining submitted information must be released.

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).

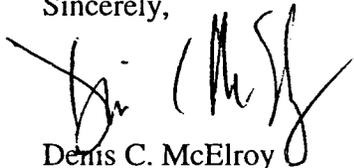
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/krl

Ref: ID# 204018

Enc. Submitted documents

c: Mr. Javier Garcia  
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(w/o enclosures)