



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2004

Mr. Marc J. Schnall
Langley & Banack
745 East Mulberry, Suite 900
San Antonio, Texas 78212-3166

OR2004-8738

Dear Mr. Schnall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211068.

The City of Camp Wood Police Department (the "department"), which you represent, received a request for a police report involving the requestor. We understand you to claim that a portion of the submitted information is excepted from disclosure under sections 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and 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 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 that the yellow-highlighted information pertains to a pending criminal case. Based upon this representation, we conclude that release of the yellow-highlighted information 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).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the

information held to be public in *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). Basic information includes a detailed description of the offense. Thus, with the exception of the basic front page offense and arrest information, you may withhold the yellow-highlighted information from disclosure based on section 552.108(a)(1).

We now turn to your section 552.117 claim against disclosure as it pertains to the blue-highlighted information. Section 552.117(a)(1) excepts from disclosure the home address, home telephone number, social security number, and family member information of an employee of a governmental body, provided the employee elected to keep such information confidential pursuant to section 552.024 of the Government Code prior to the date the governmental body received a request for the information. We note, however, that the protections of section 552.117 only apply to information that the governmental body holds in its capacity as an employer. *See* Gov't Code § 552.117 (providing that employees of governmental entities may protect certain personal information in the hands of their employer); *see also* Gov't Code § 552.024 (establishing election process for section 552.117). In this instance, the blue-highlighted information is held by the department as a law enforcement entity, not as an employer of the individuals at issue. Consequently, we find that the none of the blue-highlighted information may be withheld under section 552.117(a)(1) of the Government Code.

We note that the remaining information includes social security numbers. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ Gov't Code § 552.101. This section encompasses information made confidential by other statutes. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), 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* Open Records Decision No. 622 (1994). We have no basis for concluding that the social security numbers 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 number information, you should ensure that such information is not obtained or maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

¹ The Office of the Attorney General will raise mandatory exceptions like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the yellow-highlighted information, with the exception of basic information, may be withheld from disclosure under section 552.108(a)(1). Social security numbers may be confidential under federal law. The remaining information must be released to the requestor. As our ruling is dispositive, we need not address your section 552.130 argument against disclosure.

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,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/krl

Ref: ID# 211068

Enc. Submitted documents

c: Ms. Emma Dean
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(w/o enclosures)