



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2004

Mr. Jerrell Jolley
City of Leander
Leander Police Department
P.O. Box 319
Leander, Texas 78646-0319

OR2004-9324

Dear Mr. Jolley:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 212275.

The Leander Police Department (the "department") received a request for information pertaining to a specified incident. You claim that some of the information has been released to the requestor, but claim that the submitted information is excepted from disclosure under sections 552.101, 552.108 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 generally state that "[t]he material in Attachment B does contain investigative information . . . [which] if released could hinder this and all future investigations." You have failed, however, to reasonably explain how or why the release of this information "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a). We therefore determine that the department may not withhold any portion of the information at issue pursuant to section 552.108 of the Government Code. *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 information includes social security numbers. 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 any of the social security numbers in the file 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 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 note that the laws making social security numbers confidential are based on privacy concerns. Therefore, the requestor has a special right of access to her own social security number. *See* Gov't Code § 552.023(b) (information may not be withheld from person who is subject of information solely on basis that information is excepted from disclosure to protect the subject's privacy).

Lastly, some of the requested information is confidential under section 552.130 of the Government Code, which 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[.]

Therefore, Texas motor vehicle information would normally be excepted from disclosure pursuant to section 552.130. We note, however, that the submitted information contains the requestor's driver's license number. Section 552.130 is designed to protect the privacy interest of the individual to whom the information relates. Therefore, you must release the requestor's driver's license number pursuant to section 552.023.¹ However, you must

¹ We emphasize that if the department receives a future request for this information from an individual other than the requestor or the requestor's authorized representative, the department should again seek our decision.

withhold the marked information under section 552.130 that does not pertain to the requestor. We also note that information relating to a driver's license and motor vehicle title or registration issued by another state or country may not be withheld under section 552.130. In summary, the department must withhold the marked information under section 552.130, social security numbers other than the requestor's may be excepted under section 552.101 in conjunction with federal law, and the department must release all 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).

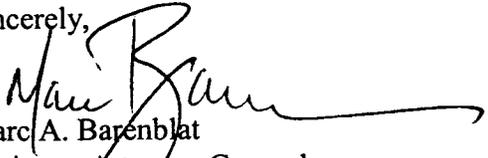
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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


Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/jh

Ref: ID# 212275

Enc. Submitted documents

c: Mr. Rocío Armas
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(w/o enclosures)