



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 15, 2004

Mr. John Patterson
Assistant City Attorney
City of Waco
Legal Services
P. O. Box 2570
Waco, Texas 76702-2570

OR2004-10607

Dear Mr. Patterson:

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# 215100.

The City of Waco (the "city") received a request for all police reports concerning a specific place of business and address. You state that you will release some information. You claim that the other requested information is excepted from disclosure under sections 552.101, 552.108, 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that the accident reports in Exhibit 7 are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Section 550.065 of the Transportation Code states that except as provided by subsection (c), an accident report completed pursuant to chapter 550 of the Transportation Code is privileged and confidential. *See* Trans. Code § 550.064 (Texas Peace Officer's Accident Report form). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In

this instance, the requestor has not provided at least two out of the three listed pieces of information. Thus, we determine that the city must withhold the accident reports in Exhibit 7 under section 552.101 in conjunction with section 550.065(b).

You also claim that portions of the police reports in Exhibit 3 are excepted from disclosure under section 552.108 of the Governmental Code. 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 police reports in Exhibit 3 relate to pending criminal investigations. Based upon this representation, we conclude that release of this 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).

We note, however, section 552.108 does not except from disclosure basic information about an arrest, an arrested person, or a crime. *See generally* Gov’t Code § 552.108(c); 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); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Types of information considered basic include a detailed description and the arrestee’s social security number. *See* Open Records Decision No. 127. Although section 552.108(a)(1) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov’t Code § 552.007.¹

Although not protected by section 552.108, you claim that arrestees’ social security numbers are excepted from disclosure 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 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

¹Because of our ruling on this issue, we need not address your other arguments regarding this information.

federal provision. We caution, however, that section 552.352 of the 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 city pursuant to any provision of law, enacted on or after October 1, 1990.

You claim that some portions of the police reports in Exhibit 6 are excepted from public disclosure under section 552.130 of the Governmental Code. Section 552.130 excepts from public disclosure information that 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[.]

Gov't Code § 552.130(a)(1)-(2). We agree that the motor vehicle record information you have highlighted must be withheld pursuant to section 552.130. We have also marked additional information that must be withheld on this basis.

In summary, the accident reports in Exhibit 7 must be withheld under section 552.101 in conjunction with section 550.065(b). With the exception of basic information, the city may withhold the highlighted portions of Exhibit 3 under section 555.108(a)(1). Social security numbers may be excepted from disclosure under section 552.101 in conjunction with federal law. Texas issued motor vehicle record information must be withheld under section 552.130. 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

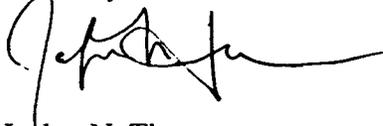
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge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



Jaelyn N. Thompson
Drafting Attorney
Open Records Division

JNT/krl

Ref: ID# 215100

Enc. Submitted documents

c: Mr. Joe Carbajal
P. O. Box 1112
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(w/o enclosures)