



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2005

Sergeant David Collins
Huntsville Police Department
1220 11th Street
Huntsville, Texas 77340-3991

OR2005-00652

Dear Sergeant Collins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 217374.

The Huntsville Police Department (the "department") received a request for information concerning a specified assault investigation. You indicate that some information will be released to the requestor. You claim, however, that the remainder of the information at issue is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You contend that the submitted offense report is excepted from disclosure under section 552.108(a)(2) of the Government Code.¹ Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning a criminal investigation "*that did not result in a conviction or deferred adjudication.*" See Gov't Code § 552.108(a)(2) (emphasis added). 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 case, you state "the offense in question . . . has been referred to the City of Huntsville Municipal Court and *has not yet resulted in a conviction or deferred adjudication*" (emphasis added). Thus, based upon your representation, we must determine that the submitted report does not pertain to a criminal

¹ We note that you do not raise any of the other provisions of section 552.108 of the Government Code as exceptions to disclosure in this instance.

investigation that has concluded in a final result other than conviction or deferred adjudication. Consequently, we determine that the submitted information is not excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code and may not be withheld by the department on that basis.

We note that the submitted information contains the social security number of a member of the public. A social security number may be withheld in some circumstances under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I).² See Open Records Decision No. 622 (1994). These amendments 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 *id.* We have no basis for concluding that the social security number at issue 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.³ 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 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 also note that the submitted report contains Texas driver's license and motor vehicle title and registration information. Section 552.130 of the Government Code excepts from disclosure information relating to a Texas motor vehicle driver's license. Gov't Code § 552.130. We have marked the information the department must withhold under section 552.130 of the Government Code.⁴

In summary, the social security number of a member of the public may be excepted under section 552.101 of the Government Code in conjunction with federal law. We have marked information that must be withheld under section 552.130 of the Government Code. The remainder of the submitted information must be released to the requestor.

² 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.

³ We note the requestor has a special right of access to his client's social security number. See Gov't Code § 552.023 (person's authorized representative has special right of access to information that is excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information).

⁴ The requestor has a special right of access to his client's motor vehicle information. Gov't Code § 552.023.

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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'DRS', with a long horizontal flourish extending to the right.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 217374

Enc: Submitted documents

c: Mr. J. Paxton Adams
Moak & Moak, P.C.
1305 11th Street
Huntsville, Texas 77340
(w/o enclosures)