



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 11, 2005

Mr. Chad Bridges  
Assistant District Attorney  
Fort Bend County  
301 Jackson  
Richmond, Texas 77469

OR2005-01305

Dear Mr. Bridges:

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# 218604.

The Fort Bend County District Attorney's Office (the "district attorney") received a request for prosecution files regarding cause numbers 110733 and 110687. You inform us and provide documentation showing that the requestor subsequently amended his request. You claim that some of the requested 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.

Initially, we note that cause number 110733 includes documents that have been filed with the court. Section 552.022 of the Government Code provides in part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

....

(17) information that is also contained in the public court record[.]

Gov't Code § 552.022(a)(17). Section 552.022(a)(17) makes information filed with a court expressly public. Therefore, the district attorney may withhold this information only to the

extent it is made confidential under other law. Although the district attorney claims that information relating to cause number 110733 is excepted from disclosure under section 552.108 of the Government Code, this exception is discretionary and thus, does not constitute other law for the purposes of section 552.022. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the court-filed documents in cause number 110733 may not be withheld under section 552.108 of the Government Code.

We turn now to the district attorney's arguments under section 552.108 for the remaining information in cause number 110733, which is not subject to section 552.022. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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. You inform us that cause number 110733 pertains to a closed criminal investigation that did not result in a conviction or deferred adjudication. Based upon this representation and our review of the remaining information relating to cause number 110733, we agree that section 552.108(a)(2) is applicable to this information.

We note, however, that section 552.108 does not except from disclosure 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*, including and arrestee's social security number. *Id.* Thus, other than basic front page offense and arrest information, which must be released to this requestor, you may withhold the remaining portion of cause number 110733 under section 552.108. We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

Although not excepted under section 552.108, you contend that the arrestee's social security number and the social security numbers in cause number 110687 are confidential. Social security numbers must 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).<sup>1</sup> *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.* You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that requires or authorizes the district attorney to obtain or maintain a social security number. Thus, we have no basis for concluding that the social security numbers are confidential under section 405(c)(2)(C)(viii)(I), and therefore

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<sup>1</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information other statutes make confidential.

excepted from public disclosure under section 552.101 of the Act on the basis of that 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 district attorney pursuant to any provision of law enacted on or after October 1, 1990.

Section 552.101 also encompasses confidential criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC"). Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. *See* Gov't Code § 411.082(2)(B) (term CHRI does not include driving record information). Therefore, to the extent the remaining submitted information contains any CHRI that is confidential under federal law or subchapter F of chapter 411 of the Government Code, the district attorney must withhold any such information under section 552.101 of the Government Code.

You also note that the remaining submitted information contains Texas-issued motor vehicle information subject to section 552.130 of the Government Code. This section 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[.]

Gov't Code § 552.130(a). Therefore, the district attorney must also withhold the Texas-issued motor vehicle information we have marked under section 552.130.

In summary, the district attorney must release the court-filed documents from cause number 110733 pursuant to section 552.022(a)(17) of the Government Code. Other than

basic information, which must be released to the requestor, the district attorney may withhold the remaining information in cause number 110733 under section 552.108(a)(2) of the Government Code. The arrestee's social security number and the social security numbers in cause number 110687 may be confidential under federal law. To the extent the remaining submitted information contains any CHRI that is confidential under federal law or chapter 411 of the Government Code, the district attorney must withhold any such information under section 552.101 of the Government Code. The submitted Texas-issued motor vehicle record information that we have marked must be withheld under section 552.130 of the Government Code. The remaining 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Department of Public 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 the General Services 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. 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,

A handwritten signature in cursive script that reads "L. Joseph James".

L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/krl

Ref: ID# 218604

Enc. Submitted documents

c: Mr. Gene Anthes  
7200 Almeda, Apartment 907  
Houston, Texas 77054  
(w/o enclosures)