



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2005

Ms. Lisa M. Salinas
Custodian of Records
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2005-01725

Dear Ms. Salinas:

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# 220008.

The Baytown Police Department (the "department") received a request for information relating to an incident involving the requestor, including the vehicle accident report and the offense report. You indicate that the department has released some of the requested information. You claim that portions of the remaining information are excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You seek to withhold the orange-highlighted portions of the submitted document under section 552.108(a)(1). You assert that the release of this information would interfere with a pending criminal prosecution. Based on your representation, we find that section 552.108(a)(1) is applicable in this instance. *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 therefore conclude that the department may withhold the orange-highlighted information under section 552.108(a)(1).

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 Texas driver's license and motor vehicle information that you have marked in pink is excepted from disclosure under section 552.130. We have marked other Texas motor vehicle information that must also be withheld from the public under this exception. We note, however, that section 552.130 protects privacy interests. Accordingly, the requestor has a special right of access to information relating to a vehicle in which he owns an interest.¹ *See* Gov't Code § 552.023. Such information may not be withheld from him under section 552.130. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

Lastly, we note that the remaining information includes social security numbers. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² Gov't Code § 552.101. This exception encompasses information that another statute makes confidential. The 1990 amendments to the federal Social Security Act make confidential social security numbers and related records that were obtained or are maintained by a state agency or political subdivision of the state under any provision of law enacted on or after October 1, 1990. *See* 42 U.S.C. § 405(c)(2)(C)(viii)(I); Open Records Decision No. 622 at 2-4 (1994). We have no basis for concluding that any social security number contained in the submitted information is confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of the federal law. Furthermore, the requestor has a special right of access to his own social security number, and that information may not be withheld from him under section 552.101 in conjunction with the federal law. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987). Otherwise, we caution you that the Act imposes criminal penalties for the release of confidential information.

¹We note that the department may require a requestor to provide additional identifying information sufficient to enable the department to determine whether the requestor is eligible to receive motor vehicle record information under chapter 730 of the Transportation Code. *See* Gov't Code § 552.222(c).

²Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because the Act prescribes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).

Therefore, prior to releasing any social security number information to a member of the public, you should ensure that no such information was obtained or is maintained by the department under any provision of law enacted on or after October 1, 1990.

In summary: (1) the department may withhold the orange-highlighted information under section 552.108(a)(1); (2) the pink-highlighted and other marked Texas driver's license and motor vehicle information must be withheld from the public under section 552.130; and (3) the department may be required to withhold a social security number from the public under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. The requestor has a special right of access to his own motor vehicle information and his social security number. The department must also release the rest of the submitted information.

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); *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 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 220008

Enc: Submitted documents

c: Mr. Joshua Leshar
112 West Jack Street
Baytown, Texas 77520
(w/o enclosures)