



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 11, 2005

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

OR2005-02083

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# 220433.

The Waco Police Department (the "department") received a request for information relating to a specified case number. You inform us that the department has released some of the requested information. You claim that the rest 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.

Section 552.108 excepts from public 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 assert that the release of the information that the department seeks to withhold under section 552.108 would interfere with an open and pending criminal investigation. 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).

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The department must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The rest of the information that the department seeks to withhold under section 552.108 is excepted from disclosure under section 552.108(a)(1).

You claim that a Texas driver’s license number contained in the submitted documents is excepted from public disclosure under section 552.130 of the Government Code, which excepts information that relates to “a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130(a)(2). We agree that the Texas driver’s license number that you have marked must be withheld under section 552.130.

We next address your section 552.101 claims. Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that other statutes make confidential. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov’t Code §§ 560.001 (defining “biometric identifier” to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You do not inform us and the submitted information does not indicate that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the department must withhold this information, which you have marked, under section 552.101 in conjunction with section 560.003 of the Government Code.

The social security number contained in the remaining information is confidential under the 1990 amendments to the Social Security Act if it was obtained or is maintained by the department 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). It is not apparent to this office that the social security number in question is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that requires or authorizes the department to obtain or maintain a social security number. Thus, we have no basis for concluding that this particular social security number was obtained or is maintained under such a law and is therefore confidential under the federal law. Nevertheless, the Act imposes criminal

penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing this social security number, the department should ensure that it was not obtained and is not maintained by the department under any provision of law enacted on or after October 1, 1990.

In summary: (1) except for the basic information that must be released under section 552.108(c), the information that the department seeks to withhold under section 552.108 is excepted from disclosure under section 552.108(a)(1); (2) the department must withhold the Texas driver's license number under section 552.130; (3) fingerprint information must be withheld under section 552.101 in conjunction with section 560.003 of the Government Code; and (4) the department may be required to withhold the social security number under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code.

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/krl

Ref: ID# 220433

Enc. Submitted documents

c: Mr. Aaron M. Wilkerson  
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(w/o enclosures)