



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 5, 1997

Ms. Tracy B. Calabrese  
Assistant City Attorney  
City of Houston  
Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR97-2653

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111329.

The City of Houston Police Department (the "department") received a request for incident report number 118361297H. You explain that you "will make available to the requestor the Public Release Information portion of the requested incident report." However, you claim that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108, the "law enforcement exception," provides in relevant part as follows:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or] (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication. . . .

You state that charges against the suspect were rejected because the district attorney declined to prosecute. Because this investigation did not result in a conviction or deferred adjudication, we conclude that you may withhold the requested information under section 552.108(a)(2).

However, we note that basic information about an arrested person, an arrest, or a crime is not excepted from required public disclosure. Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information, including the identification and description of the complainant, even if this information is not actually located on the front page of the offense report.<sup>1</sup> *See generally Houston Chronicle Publ'g Co.*, 531 S.W.2d at 187; Open Records Decision No. 127 (1976). Therefore, we conclude that, except for basic information, section 552.108(a)(2) of the Government Code excepts the requested information from public disclosure. Although section 552.108 authorizes you to withhold the information from public 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.

We note that certain information in the incident report is confidential by law and must not be released under section 552.130. The Seventy-fifth Legislature added section 552.130 to the Open Records Act which governs the release and use of information obtained from motor vehicle records. Section 552.130 provides in relevant part as follows:

- (a) Information is excepted from [required public disclosure] 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[.]

*See* Act of May 29, 1997, S.B. 1069, § 4, 75<sup>th</sup> Leg., R.S. (to be codified at Gov't Code § 552.130). Thus, you must withhold the driver's license number, VIN number, and the license plate number pursuant to section 552.130.

Lastly, the incident report also contains social security numbers. 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 incident report are confidential under section

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<sup>1</sup>The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Government Code on the basis of that federal provision. We caution, however, that section 552.353 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 are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/rho

Ref.: ID# 111329

Enclosures: Submitted documents

cc: Ms. Hattie Crawford  
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(w/o enclosures)