



March 12, 1999

Ms. E. Cary Grace
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 11562
Houston, Texas 77251-1562

OR99-0719

Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 122738.

The City of Houston Police Department (the "department") received a request for ten specified incident reports. In response to the request, you submit to this office for review the information which you assert is at issue.¹ You state that the "Police Department will make available to the requestor [six of the specified offense reports] and the Public Release Information portions of [the other four offense reports.]"² However, you assert that the remaining 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 excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

....

¹You have also submitted to this office information that apparently was sent for informational purposes only. In this ruling, we do not address the public disclosure of that information.

²As you have noted, basic information normally found on the front page of an offense report, including a detailed description of the offense, is generally considered public. See Gov't Code § 552.108(c); *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); Open Records Decision No. 127 (1976).

(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[.]

....

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. 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 your brief to this office, you explain that you seek to withhold the submitted information from the offense reports, since either the cases were dismissed or a suspect in the offense was not charged or arrested. In reliance on your statements in support of the claimed exception, we conclude that you have met your burden of establishing the applicability of section 552.108(a)(2) to most of the submitted information. However, we note that you have highlighted and seek to withhold the name of one of the suspects or arrested persons in each of Exhibits 2 and 5; this information is basic front page information which must be released wherever it appears.³

Although you have not raised any other applicable exceptions, based on the records at issue, we must consider whether some of the submitted information should be excepted from required public disclosure under sections 552.101 and 552.130 of the Government Code.⁴ Therefore, we next consider whether some of the requested information must be withheld pursuant to section 552.130 of the Government Code. Section 552.130 to the Open Records Act 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 the requirement of Section 552.021 if the information relates to:

³Although section 552.108(a)(2) authorizes you to withhold the remaining information from 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.

⁴The Office of the Attorney General will raise section 552.101 on behalf of a governmental body when necessary to protect third-party interests. *See generally* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state;
or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Gov't Code § 552.130. Section 552.130 provides that information is excepted from disclosure if it relates to a motor vehicle driver's license, title or registration issued by a state agency. This type of information may be released only as provided under chapter 730 of the Transportation Code. We have marked the type of information which must be withheld pursuant to section 552.130.⁵ The remaining information must be released to the requestor.

Finally, we note that the submitted information contains social security numbers. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. 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 file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Open Records Act on the basis of that federal provision. We caution, however, that section 552.352 of the Open Records 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 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

⁵We also note that section 2721(a) of title 18 of the United States Code generally prohibits a state department of motor vehicles from releasing personal information obtained in connection with a motor vehicle record. Personal information means information that identifies a person, including an individual's photograph, social security number, driver identification number, name, address, but not the zip code, telephone number, and medical or disability information.

presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

~~Sam Haddad~~
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 122738

cc: Mr. Norman J. Silverman
Attorney at Law
711 Travis, Suite 3200
Houston, Texas 77002
(w/o enclosures)