



January 5, 2000

Mr. Mark Flowers
Assistant City Attorney
City of Midland
300 North Loraine, Room 320
Post Office Box 1152
Midland, Texas 79702-1152

OR2000-0029

Dear Mr. Flowers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 131406.

The Midland Police Department (the “department”) received a request for certain police reports pertaining to a particular individual. You have submitted two incident reports that you state are responsive.¹ You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code and under other law that governs the disclosure of confidential information. We have considered the exceptions you claim and have reviewed the information you submitted.

You claim that the incident report submitted as Exhibit “B” is excepted from disclosure under section 58.007(c) of the Family Code.² We disagree. Section 58.007 of the Family Code “applies only to the inspection and maintenance of a physical record or file concerning a child[.]” Fam. Code § 58.007(a). For the purposes of section 58.007, a child is “a person who is . . . ten years of age or older and under 17 years of age[.]” Fam. Code § 51.02(2)(A).

¹As your Exhibits “C” and “D” are duplicate copies of the same report, this letter will refer to that report for all purposes as Exhibit “C.”

²In certain instances, section 552.101 of the Government Code may operate in conjunction with another statute such as section 58.007 of the Family Code to except confidential information from public disclosure. Section 552.101 encompasses statutes and excepts information considered to be confidential by law. Although you did not raise section 552.101, this office will do so on behalf of a governmental body because of the potential criminal consequences of disclosing confidential information. *See Gov’t Code § 552.352.*

As the suspect identified in Exhibit "B" is seventeen years old, and therefore is not a "child" as defined by section 51.02, neither the former section 51.14 of the Family Code nor the present section 58.007(c) is applicable. Thus, except for the information discussed below, you must release Exhibit "B."

You also claim that Exhibit "B" contains driver's license and social security numbers that are excepted from disclosure. A driver's license number is confidential under section 552.130(a) of the Government Code, which provides that "[i]nformation is excepted from [required public disclosure] if [it] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130(a)(1), (2). Thus, the department must withhold both the driver's license number and the license plate number in Exhibit "B" pursuant to section 552.130. A social security number or related record may be excepted from disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994). Although we have no basis for concluding that the social security number in Exhibit "B" is confidential under the federal law, we caution you that chapter 552 of the Government Code prescribes criminal penalties for the release of confidential information. See Gov't Code § 552.352. Prior to releasing the social security number, you should ensure that it was not obtained and is not maintained under any provision of law enacted on or after October 1, 1990.

You claim that the incident report submitted as Exhibit "C" is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) provides that "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if . . . 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 Exhibit "C" relates to an investigation that did not result in conviction or deferred adjudication. Based on your representation, we conclude that a portion of the information in Exhibit "C" may be withheld from public disclosure pursuant to section 552.108(a)(2) of the Government Code. We note, however, that section 552.108(a)(2) is inapplicable to the basic front-page offense and arrest report information held to be public in *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). See Gov't Code § 552.108(c); Open Records Decision No. 127 (1976). You must release the type of information that is considered to be basic front-page offense and arrest report information, even if it does not actually appear on the first page of the incident report.

You also claim that Exhibit "C" contains information that is excepted from disclosure under the informer's privilege. We need only address the informer's privilege as to the complainant, whose identity is basic information that normally must be released under

section 552.108(c) and *Houston Chronicle*. The identities of the other highlighted persons are excepted from disclosure under section 552.108(a)(2). The informer's privilege is encompassed by section 552.101 of the Government Code, which is applicable to "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Although it is recognized by Texas courts, see *Aguilar v. State*, 444 S.W.2d 935 (Tex. Crim. App. 1969), generally the informer's privilege does not protect the identity of an informer who is known to the subject of the complaint. See Open Records Decision Nos. 202 (1978), 127 (1976). Because in this instance the person who is the subject of the complaint knows the identity of the complainant, the informer's privilege is inapplicable.

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.

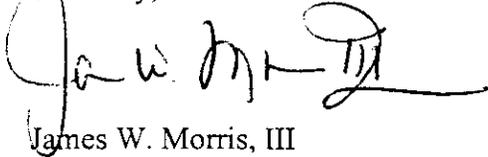
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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).

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 black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a long horizontal flourish at the end.

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

JWM/ch

Ref: ID# 131406

Encl. Submitted documents

cc: Ms. Christi Gardner
9019 West County Road 162
Midland, Texas 79706
(w/o enclosures)