



April 13, 2000

Ms. Judith A. Hunter  
Paralegal  
City of Georgetown  
P.O. Box 409  
Georgetown, Texas 78627-0409

OR2000-1479

Dear Ms. Hunter:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code (the "Act"). Your request was assigned ID# 134313.

The City of Georgetown (the "city") received a request for all information pertaining to three specified police report numbers. You have submitted the responsive records for our review. You state that information relating to one report number has been released to the requestor. You claim that the other responsive records are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

You assert that the records that the city seeks to withhold are excepted from public disclosure under section 552.108(a)(1) of the Act. Section 552.108, the "law enforcement" exception, provides in relevant part 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 . . . 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, if the responsive information does not do so on its face, how and why section 552.108 is applicable. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). A claim under section 552.108(a)(1) generally requires a showing of an active investigation or prosecution. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App. -- Houston [14<sup>th</sup> 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); *see also* Open Records Decision No. 216 (1978) (noting discussion in *Houston Chronicle*). In any event, there must be a demonstration that release of the information would interfere with law enforcement or prosecution. *See* Open Records Decision Nos. 616 at 1 (1993), 216 at 4 (1978).

You inform us that the records submitted as Exhibit E relate to a case that is pending in municipal court. Based on your representation and our review of those records, we conclude that most of the records in Exhibit E are excepted from disclosure under section 552.108(a)(1) of the Act. We note, however, that section 552.108 does not except from public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Pursuant to section 552.108(c), the city must release the basic front-page offense and arrest report information held to be public in *Houston Chronicle*, even if this information does not literally appear on the front page of the corresponding police report. *See Houston Chronicle*, 531 S.W.2d at 186-87; *see also* Open Records Decision No. 127 at 3-5 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). We also note that Exhibit E contains documents filed with a court. All such responsive documents that have been filed with a court are public and must be released. *See* Gov’t Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992).

You state that the records submitted as Exhibits C and D relate to incidents that resulted in the defendant being placed on one-year deferred adjudication. As those records do not relate to active cases, there is no presumption that their release would interfere with law enforcement or prosecution. *See Houston Chronicle*, 531 S.W.2d at 186-87. Furthermore, you have not explained how the release of records relating to inactive cases would unduly interfere with law enforcement or crime prevention. Therefore, the city may not withhold the records in Exhibits C and D under section 552.108. *See* Open Records Decision Nos. 616 at 1 (1993) (stating that once a case is closed, information may be withheld under section 552.108 only if its release will unduly interfere with law enforcement or crime prevention), 216 at 4 (1978) (stating that the Act clearly places the burden on the governmental body to establish how and why a particular exception applies to requested information).

We note, however, that some of the information contained in Exhibits C and D may be confidential by law. Section 552.101 of the Act excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. A social security number is excepted from required public disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. *See* Open Records Decision No. 622 at 2-4 (1994). Exhibits C and D contain the social security numbers of the complainant and of an arrested person. As Exhibits C and D reflect that the complainant in the related cases is the same person as the requestor here, the requestor has a special right of access under section 552.023 of the Act to information held by the city that relates to the requestor and is protected from disclosure by laws intended to protect her privacy interests. *See* Gov’t Code § 552.023(a). Therefore, the requestor’s own social security number may not be withheld from her under section 552.101 of the Act in conjunction with the federal law. With regard to the social security number of the arrested person that is contained in Exhibits C and D, it is not apparent to this office that his social security number was obtained or is maintained by the city pursuant to any provision of law

enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the city to obtain or maintain a social security number. Therefore, we have no basis for concluding that the arrested person's social security number was obtained or is maintained pursuant to such a statute and is therefore confidential under section 405(c)(2)(C)(vii)(I) of the federal law. We caution you, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Therefore, prior to releasing the arrested person's social security number, the city should ensure that the number was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

Section 552.130 of the Act governs the release and use of certain motor vehicle record information. Section 552.130 provides in relevant part:

(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;

(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.

Exhibits C and D contain a Texas identification number ("ID#") attributed to the arrested person. You have not provided information sufficient to enable us to determine whether that identification number relates to a motor vehicle record that is within the ambit of section 552.130(a). If that identification number relates to such a record, you must withhold it from disclosure in accordance with section 552.130 of the Act.

In summary, most of the records submitted as Exhibit E are excepted from disclosure under section 552.108(a)(1) of the Act. However, the city must release basic front-page information pursuant to section 552.108(c) and records filed with a court pursuant to section 552.022(a)(17). The records submitted as Exhibits C and D are not excepted from disclosure under section 552.108. However, those records contain information that may be excepted from disclosure under sections 552.101 and 552.130 of the Act. Except for any information that must be withheld under sections 552.101 and 552.130, the records contained in Exhibits C and D must be released. The requestor is entitled to the release of her own social security number under section 552.023(a). 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.

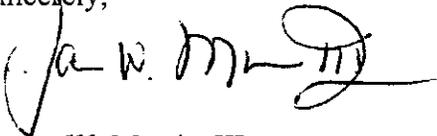
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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 written in a cursive style with a large, stylized initial "J".

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

JWM/ch

Ref: ID# 134313

Encl. Submitted documents

cc: Ms. Tammy Chavez-Gomez  
1500-A Parklane  
Georgetown, Texas 78628  
(w/o enclosures)