



May 1, 2000

Ms. Sarah H. Blackburn
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2000-1675

Dear Ms. Blackburn:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 134807.

The City of Midland received a request for a copy of police report number 0002140030. You claim that the 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(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Based on the information you provided, we understand you to assert that the requested information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable. We agree with the markings in Exhibit B.¹

However, as you correctly noted in your letter, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing 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). Thus, with the exception of the basic front page offense and arrest information, you may withhold the

¹We note that, according to your markings in Exhibit E, you have already released some of the highlighted information in Exhibit B.

requested information from disclosure based on section 552.108(a)(2). We agree with the markings you have made in Exhibit E. We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

You also assert that portions of the information are excepted from disclosure under section 552.130. Section 552.130 of the Government Code excepts information that 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. Therefore, you must withhold all driver's license numbers, license plate numbers and VIN numbers. We agree with the markings in Exhibit D.

The social security numbers contained in your records may be confidential if they were obtained or are maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990. 42 U.S.C. § 405(c)(2)(C)(vii); *see* Open Records Decision No. 622 (1994). Government Code section 552.352 provides criminal penalties for the release of information considered confidential under chapter 552. A violation under section 552.352 is a misdemeanor constituting official misconduct. Gov't Code § 552.352(b), (c). Because section 552.108 is dispositive, we need not address your other claimed exception.

Finally, we note that the city is using the section 552.305 notification letter to notify persons whose privacy interests may be implicated by the release of the requested information. We do not believe that such notification is required under section 552.305. A section 552.305 letter should be sent to a third-party when the city receives a request for that party's *proprietary* information. In the past, this office was responsible for notifying third parties of their opportunity to submit comments under section 552.305 of the Government Code. However, the responsibility of notifying third parties under section 552.305 is now upon the requesting governmental body. *See* Gov't Code § 552.305(d). We recognize that this recent procedural change has caused a fair amount of confusion. However, your office has been counseled on the proper use and requirements of the section 552.305 notification letter. Again, the city is only required to send the section 552.305 notification letter when a person's *proprietary* information is at issue in a request for a decision to this office. If you have additional questions regarding the section 552.305 notification process, please contact the Open Government Hotline, toll free, at 877/673-6839 for immediate clarification.

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,



Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/nc

Ref: ID# 134807

Encl. Submitted documents

cc: Ms. Bette Gordon
2707 Roosevelt Avenue
Midland, Texas 79701-3003
(w/o enclosures)