



August 14, 2000

Mr. Keith Stretcher
City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2000-3090

Dear Mr. Stretcher:

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# 137996.

The City of Midland (the “city”) received a request for information relating to a specified case number. You have submitted information that the city deems to be responsive to the request. You claim that the requested 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 have reviewed the information you submitted.¹

Section 552.108 of the Government Code, 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 . . . 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

¹We note that the requestor also seeks copies of documents that the city has not submitted to this office, including a charging instrument, an indictment form, and a judgment. We also note that the request for information is addressed to the municipal court. Access to judicial records is governed by law other than the Public Information Act. *See* Gov’t Code §§ 552.003(1)(B), 552.0035(a); *see also* *Ashpole v. Millard*, 778 S.W.2d 169, 170 (Tex. App. -- Houston [1st Dist.] 1989, no writ) (public has right to inspect and copy judicial records subject to court’s inherent power to control access to its records). However, chapter 552 of the Government Code specifically requires the disclosure of any information held by the city that is governed by the Public Information Act and that also is contained in a public court record, unless that information is expressly confidential under other law. *See* Gov’t Code § 552.022(a)(17). We therefore assume that the city has released to the requestor any responsive information that is governed by the Public Information Act and that the city has not submitted and sought to withhold in seeking this ruling. If not, the city must release that information immediately. *See* Gov’t Code §§ 552.006, 552.221(a); Open Records Decision No. 664 (2000).

adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) protects law enforcement records pertaining to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication. *See also* Open Records Decision No. 616 (1993) (construing statutory predecessor). A governmental body that claims an exception to disclosure under section 552.108 must sufficiently 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).

You inform us that the submitted information concerns a closed case. You also inform us that the case did not result in a conviction or a deferred adjudication as to two specified individuals. The submitted information identifies those individuals as suspects. Based on the outcome of the investigation as to those two individuals, the city seeks to withhold all of the submitted information under section 552.108(a)(2). Alternatively, you seek to withhold the identities of the two specified suspects. We note that the submitted information identifies other individuals who were arrested and charged with crimes. You do not inform us of the outcome of the case with respect to those individuals, and we are not otherwise able to determine whether or not they were convicted or received deferred adjudications. Therefore, you have not demonstrated that information relating to those individuals and their alleged criminal conduct is excepted from disclosure under section 552.108. Furthermore, the city has not demonstrated that the submitted information may be withheld under section 552.108(a)(1), which you also raise.² However, based on our review of the submitted information and your representations regarding the two suspects who were not the subject of a conviction or a deferred adjudication, we conclude that the identities of those two individuals are excepted from disclosure under section 552.108(a)(2). We have marked the information that the city may withhold.

You also seek to withhold the identities of individuals who provided information to law enforcement officers under section 552.101 of the Government Code in conjunction with the common law informer’s privilege. Section 552.101 excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Texas courts have recognized the common law “informer’s privilege.” *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). In *Roviaro v. United States*, 353 U.S. 53 (1957), the United States Supreme Court explained the rationale that underlies the informer’s privilege as follows:

What is usually referred to as the informer’s privilege is in reality the Government’s privilege to withhold from disclosure the identity of persons who furnish information of *violations of law to officers charged with*

²Section 552.108(a)(1) excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1).

enforcement of that law. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, *by preserving their anonymity*, encourages them to perform that obligation. [Emphasis added.]

Id. at 59. The “informer’s privilege” aspect of section 552.101 protects the identity of persons who report violations of the law. When information does not describe conduct that violates the law, the informer’s privilege does not apply. See Open Records Decision Nos. 515 (1988), 191 (1978). The privilege does not protect the contents of communications that do not reveal the identity of the informant. *Roviaro v. United States*, 353 U.S. at 60. Further, because part of the purpose of the informer’s privilege is to prevent retaliation against informants, the privilege does not apply when the informant’s identity is known to the individual who is the subject of the complaint. See Open Records Decision No. 208 (1978). In this instance, the responsive information identifies only one individual who is described as having provided information to law enforcement officers in connection with their investigation. The responsive information further reflects that the identity of the informer is known to the individuals whose apparent unlawful conduct was reported. You have not advised us that the informant remains anonymous. Accordingly, the identity of the informant is not excepted from disclosure under section 552.101 in conjunction with the common law informer’s privilege.

You also claim that the responsive information contains social security number information that must be withheld from disclosure. Social security number information may be confidential 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 that information 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). It is not apparent to this office that the social security number information contained in the submitted information either 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 information in question was obtained or is maintained pursuant to such a law and is therefore confidential under section 405(c)(2)(C)(viii)(I) of the federal law. We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. In this instance, the requestor has a special right of access to her own social security number information. See Gov’t Code § 552.023(a); Open Records Decision No. 481 at 5 (1987). Prior to releasing any other social security number information, the city should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

Finally, you also claim that the submitted information contains motor vehicle record information that is excepted from disclosure under section 552.130 of the Government Code. 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.

Gov't Code § 552.130(a). The city must withhold motor vehicle record information, including Texas driver's license and license plate numbers, in accordance with section 552.130.

In summary, the identities of the two individuals who were not the subject of a conviction or a deferred adjudication are excepted from disclosure under section 552.108(a)(2). None of the responsive information is excepted from disclosure under section 552.101 in conjunction with the common law informer's privilege. Social security number information pertaining to individuals other than the requestor may be confidential under section 552.101 in conjunction with federal law. Motor vehicle record information must be withheld in accordance with section 552.130. With these exceptions, the requested information must be released.

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.

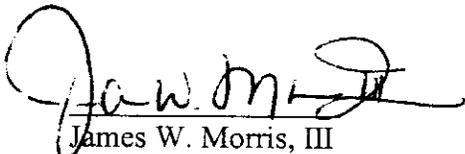
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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,



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

JWM/pr

Ref: ID# 137996

Encl. Marked documents

cc: Ms. Larissa Sellers
18390 NW Cornell Road, Apt. E
Beaverton Oregon 97006
(w/o enclosures)