



September 14, 2000

Mr. Tommy W. Lueders
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2000-3546

Dear Mr. Lueders:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139467.

The City of Midland (the "city") received a request for a specified police report. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108(a)(2) of the Government Code, and under section 731.002 of the Transportation Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses the common law right to privacy. You assert that all social security numbers are protected by both the common law right of privacy and by federal statute. From our review of the submitted materials we conclude that the only social security number at issue is that of the requestor. No privacy interest arises where a requestor is seeking only information about himself. Open Records Decision No. 481 (1987). Further, a governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles. Gov't Code § 552.023. Therefore, the requestor's social security number is not excepted from disclosure by section 552.101.

You contend that the subject information is excepted from disclosure by section 552.108(a)(2). This section excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime 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." Gov't Code 552.108(a)(2). This section excepts certain information in cases

that have *reached a final conclusion* other than conviction or deferred adjudication. You argue that the subject information is excepted from disclosure because it relates to “an investigation that has not *yet* resulted in conviction or deferred adjudication.” The materials indicate that the subject offense is currently being prosecuted. You have not informed this office of the final resolution of this case, or if there has been a final resolution. We conclude that you have not demonstrated that the subject information is excepted from disclosure by section 552.108(a)(2) of the Government Code. Therefore, you may not withhold responsive information under section 552.108(a)(2).¹

You raise section 731.002 of the Transportation Code. The information subject to that statute is excepted under section 552.130 of the Government Code. This section governs the release and use of information obtained from motor vehicle records, and provides in relevant part as follows:

(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; [or]

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

You must withhold Texas driver’s license numbers. All other responsive information must be released to the requestor.

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).

¹We generally presume that section 552.108(a)(1) excepts information that relates to a pending or ongoing investigation or prosecution. See *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) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). However, as you have raised section 552.108(a)(2) exclusively, we have no basis for determining that 552.108(a)(1) applies to the subject information.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 139467

Encl Submitted documents

cc: Ms. Cheri A. Rhoads
3503 Princeton
Midland, Texas 79703
(w/o enclosures)