



October 19, 2000

Mr. Charles M. Allen, II  
Legal Office  
City of Richardson Police Department  
P.O. Box 831078  
Richardson, Texas 75083-1078

OR2000-4071

Dear Mr. Allen:

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# 140336.

The Richardson Police Department (the "department") received a request for offense and incident reports, records of calls or complaints made, and other information relating to a specified address. You have released a portion of the requested information. You claim that 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.

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 . . . 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). 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). Section 552.108(a)(2) protects information relating to a closed investigation or prosecution that did not result in a conviction or deferred adjudication. *See Open Records Decision No. 216* (1978) (addressing applicability of statutory predecessor to closed cases). You state that the police report relating to Service No. 00-046697 and additional call card reports pertain to criminal investigations that did not result in a conviction or a deferred adjudication. Based on your

representation, we conclude that the report in No. 00-046697 and the records related to that report are excepted from disclosure under section 552.108(a)(2).<sup>1</sup>

We note, however, that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Company 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). Section 552.108(c) requires the release of front-page offense and arrest report information, including a detailed description of the alleged offense, even if that information is not literally located on the front page of a corresponding police report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

You also have submitted responsive records that pertain to other incidents. You do not inform us of the status of the investigations of those incidents. However, you do also raise section 552.108(b), which provides in relevant part that “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). You assert that “[t]he documents not provided constitute internal memoranda, the release of which would interfere with the investigation, detection and prosecution of crime in that it would provide persons engaged in criminal activity of [sic] the records and information maintained by this and other police departments[.]” We conclude, however, that you have not made a sufficiently specific showing of how or why the release of the other submitted police records would interfere with law enforcement or crime prevention. Accordingly, we conclude that the department may not withhold the balance of the submitted records under section 552.108(b)(1). *See also* Open Records Decision Nos. 636 (1995), 531 (1989).

Please note that in releasing the responsive records that are not excepted from disclosure under section 552.108, you must withhold portions of those records that are or may be confidential under section 552.101 of the Government Code in conjunction with other law.<sup>2</sup> Criminal history record information (“CHRI”) obtained from the National Crime Information Center (“NCIC”) or the Texas Crime Information Center (“TCIC”) is confidential under section 552.101 in conjunction with federal and state law. The dissemination of CHRI obtained from the NCIC network is governed by federal law. Federal regulations prohibit

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<sup>1</sup>This conclusion assumes that in referring to “Service Number 00-4667,” you meant No. 00-046697.

<sup>2</sup>Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body. *See* Open Records Decision No. 325 (1982) (raising statutory predecessor).

the release to the general public of CHRI that is maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself”); *see also* Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* ORD 565 at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See* Gov’t Code § 411.089(b). Thus, any CHRI generated by the federal government or another state may be disclosed only in accordance with the federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety (the “DPS”) or any other criminal justice agency must be withheld as provided by subchapter F of chapter 411 of the Government Code. Accordingly, any criminal history record information that was obtained from the NCIC or the TCIC is confidential and must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code. We have marked the criminal history record information that the department must withhold.

A social security number may be confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number 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 department obtained or maintains any social security number contained in the records in question 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 department to obtain or maintain a social security number. Therefore, we have no basis for concluding that any of the social security numbers in question were obtained or are maintained pursuant to such a statute and are 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. Therefore, prior to releasing any social security number contained in the submitted records the department should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

The records that are not excepted under section 552.108 also contain motor vehicle record information, the disclosure of which is governed by 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). You must withhold motor vehicle record information, including a Texas driver's license, license plate, or vehicle identification number, in accordance with section 552.130. We have marked that information.

In summary, the records pertaining to Service No. 00-046697 are excepted from disclosure under section 552.108(a)(2), except for basic information, which you must release in accordance with section 552.108(c). The other responsive records contain information that is or may be excepted from disclosure under sections 552.101 and 552.130. Information that is not excepted under section 552.108(a)(2), 552.101, or 552.130 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).

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.

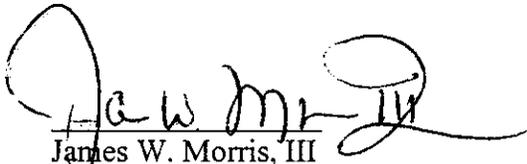
The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



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

JWM/seg

Ref: ID# 140336

Encl. Submitted documents

cc: Ms. Susan Barilich  
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(w/o enclosures)