



October 31, 2000

Ms. Mary E. Reveles
Assistant County Attorney
Fort Bend County
301 Jackson, Suite 621
Richmond, Texas 77469-3108

OR2000-4235

Dear Ms. Reveles:

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# 140693.

The Fort Bend County Sheriff's Office (the "county") received a request for forty-eight specified case files concerning alleged assaults upon clients of the Richmond State School by employees. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code, sections 12.003 and 21.012 of the Human Resources Code, and sections 576.005 and 595.001 of the Health and Safety Code. You have submitted representative samples of the requested information for our review.¹ We have considered the exceptions you claim and reviewed the submitted information.

You contend that exhibit C is excepted from public disclosure pursuant to Government Code section 552.108. Section 552.108 of the Government Code provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office. †

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) 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; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An 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 the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In support of your contention that exhibit C is excepted from disclosure by section 552.108, you state the following:

With regard to this case, the District Attorney has informed me that the defendant was found guilty on May 25, 2000, and received 6 years deferred adjudication. In the event the defendant does not comply with the terms of his deferred adjudication, the defendant will be subject to further prosecution.

Therefore, as this case is still pending, it is this office's opinion that § 552.108 . . . applies to this request[.]

Please be advised that release of the Sheriff Office investigation reports regarding this matter could interfere with the future investigation and/or prosecution of this case if the information requested was made available to the defendant. The defendant could utilize the requested information to hinder any future investigation and any future prosecution of this case, as well as exert undue influence on witnesses. As you will determine from review of Exhibit C, the documents requested contain officer statements, notes and thought processes with regard to this investigation. Additionally, the documents contain the name, age, race and date of birth of witnesses of the incident currently under investigation and witness affidavits. The release of this information could potentially hinder the investigation or prosecution of this case if it was released to the public and used to defend any party in any criminal and/or civil action that may be filed.

As the defendant has been found guilty and received a sentence, neither the investigation nor the prosecution of the matter is pending. You have not otherwise explained how release of the requested information would interfere with the detection, investigation or prosecution of crime. The documents do not contain information relevant to the probation of the named individual. Rather, the documents contain information relevant to the investigation of the crime for which the named individual was found guilty. Thus, the documents do not explain on their face how and why their release would interfere with law enforcement. Accordingly, we conclude that you may not withhold the information under subsection 552.108(a)(1) or (b)(1). Subsections 552.108(a)(2) and (b)(2) are not applicable because the case has concluded in a result of deferred adjudication. You have not claimed the applicability of subsections 552.108(a)(3) and (b)(3). Thus, we conclude exhibit C is not excepted from disclosure by section 552.108.

The submitted information contains offense reports created by the county Sheriff's Office. You argue that information identifying the state school residents are confidential under common law privacy and several statutes. It appears that the offense reports were included among a set of reports which were the subject of a previous open records request made by the same requestor. That information was ruled upon in Open Records Letter No. 2000-2228 (2000). Open Records Letter No. 2000-2228 concluded that the identifying information of the residents of the Richmond State School contained in the offense reports must be withheld from disclosure under section 552.101 in conjunction with the common law right to privacy.² Therefore, you must withhold the information which was the subject of the former request in accordance with Open Records Letter No. 2000-2228.

The submitted information contains Department of Protective and Regulatory Services ("DPRS") abuse and neglect reports and DPRS adult protective services intake reports. You contend this information is excepted from public disclosure pursuant to Government Code section 552.101 in conjunction with sections 12.003 and 21.012 of the Human Resources Code and sections 576.005 and 595.001 of the Health and Safety Code. However, chapter 48 of the Human Resources Code governs investigations and protective services for elderly and disabled persons. Section 552.101 of the Government Code excepts from disclosure information that is made confidential by law, including information made confidential by statute. Section 48.101 of the Human Resources Code provides as follows:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

- (1) a report of abuse, neglect, or exploitation made under this chapter;
- (2) the identity of the person making the report; and
- (3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department or investigating state agency rule and applicable federal law.

...

²Because common law privacy is dispositive, we do not consider your other statutory claims.

(d) The department or investigating state agency by rule shall provide for the release on request to a person who is the subject of a report of abuse, neglect, or exploitation or to that person's legal representative of otherwise confidential information relating to that report. The department or investigating state agency shall edit the information before release to protect the confidentiality of information relating to the reporter's identity and to protect any other individual whose safety or welfare may be endangered by disclosure.

We conclude that the DPRS reports in the submitted information are confidential pursuant to section 48.101(a) of the Human Resources Code. Consequently, this information must not be disclosed to the public, except for a purpose consistent with chapter 48 of the Human Resources Code, or as provided by DPRS rule or federal law. *See* Hum. Res. Code § 48.101(b). *See also* § 48.101(c)-(f) (permitting release of confidential information in certain circumstances). For your reference we have marked the relevant information which must be withheld in its entirety.³

We note that the information which must be released to the requestor contains social security numbers. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the county pursuant to any provision of law, enacted on or after October 1, 1990.

The information which must be released to the requestor also contains Texas drivers' license information. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

³As section 48.101 is dispositive, we do not consider your other claims regarding this information.

- (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[.]

Thus, you must withhold the Texas drivers' license numbers under section 552.130.

In summary, the identifying information of the state school residents must be withheld in accordance with Open Records Letter No. 2000-2228 (2000). The DPRS reports must be withheld pursuant to section 48.101(a) of the Human Resources Code. The social security numbers are excepted from required public disclosure under section 552.101 of the act in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if they were obtained or are maintained by the county pursuant to any provision of law enacted on or after October 1, 1990. Texas drivers' license numbers must be withheld under section 552.130. The remaining 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).

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,



Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/pr

Ref: ID#140693

Encl. Submitted documents

cc: Mr. Phil Archer
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(w/o enclosures)