



November 16, 2000

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2000-4436

Dear Ms. Graham:

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# 141666.

The City of Mesquite Police Department (the "department") received a request for "a copy of all incident, offense, follow up, continuation, and lab reports" pertaining to a specified case in which the accused has already been convicted of burglary. You argue that the department is not obligated to respond to the public information request. In the alternative, you claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, you request a decision from the Attorney General regarding "the Requestor's right of access to the [responsive] information pursuant to section 552.028 of the [Public Information] Act." Section 552.028 of the Government Code reads in pertinent part as follows:

- (a) A governmental body is not required to accept or comply with a request for information from:
 - (1) an individual who is imprisoned or confined in a correctional facility; or
 - (2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under this chapter.

Thus, the request here by the inmate's attorney is considered a proper request under the Act to which a governmental body must comply. Section 552.028 neither prohibits nor requires release of information to an attorney. The remaining provisions of the Public Information Act govern release to the requestor. You also state that the District Attorney's office is the appropriate place to obtain the requested information, not the department. However, under the Public Information Act, a governmental body is required to respond to requests for information it collects, assembles, or maintains pursuant to a law or ordinance or in connection with the transaction of official business regardless of whether another governmental body holds the same information. *See Gov't Code §§ 552.002, .021, .221, .301.*

We now turn to the exceptions you claim. Because your section 552.103 claim is the most inclusive, we will address it first. You contend that all of the requested records are excepted from disclosure under section 552.103 of the Government Code because the records relate to a pending criminal prosecution. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. *Open Records Decision No. 588 at 1 (1991)*. In this instance, you admit that there is no pending litigation, and you do not indicate that litigation is reasonably anticipated. We therefore conclude that you have not met your burden of demonstrating the applicability of section 552.103 in this instance. Accordingly, the department may not withhold any of the requested information pursuant to section 552.103.

Next, you claim that information identifying the complainant and witnesses, including their statements, is excepted from disclosure under the informer's privilege. The informer's privilege, incorporated into the Public Information Act by section 552.101, has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). It protects the identities of individuals who report violations of statutes to police, other law enforcement agencies, and certain administrative officials. *See Open Records Decision No. 279 (1981)*. It also protects from disclosure the identities of persons who report activities over which a governmental body has criminal or quasi-criminal law-enforcement authority. *See Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978)*. In order for information to come under the protection of the informer's privilege, it must relate to a violation of a criminal or civil statute. *See Open Records Decision Nos. 515 (1998), 391 (1983)*. The privilege excepts an informer's statement only to the extent necessary to protect the informer's identity. *See Open Records Decision No. 549 at 5 (1990)*. Once the identity of the informer is known to the subject of the communication, the exception is no longer applicable. *See Open Records Decision No. 202 (1978)*. After reviewing the documents, it is apparent the requestor already knows the identity of the alleged informers. Consequently, the department may not withhold the complainant's and witnesses' identifying information under section 552.101 and the informer's privilege. *See Open Records Decision No. 202 (1978)*.

You also claim that the same statements and identifying information of the complainant and witnesses are excepted from disclosure under section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) excepts from disclosure “[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” if “release of the internal record or notation would interfere with law enforcement or prosecution.” 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 section 552.108 is applicable. Gov’t Code §§ 552.108, .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Here, you conclusorily state that “[r]elease of information revealing the identities of eyewitnesses would discourage the reporting of crimes and thus, would interfere with the detection, investigation, and prosecution of crime in general.” You do not specifically show how or why release of the information pertaining to the witnesses involved here would harm the prospects of future cooperation between witnesses and law enforcement officers or otherwise interfere with law enforcement or prosecution. Consequently, we do not believe you have sufficiently demonstrated, nor is it apparent from the record, that release of the witnesses’ identifying information would interfere with law enforcement or prosecution. *See* ORD 252 at 4. Furthermore, the identity of the complainant is “basic information” that may not be withheld under section 552.108. *See* Gov’t Code § 552.108(c) (section 552.108 does not except from public disclosure “information that is basic information about an arrested person, an arrest, or a crime”); *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); Open Records Decision No. 127 (1976). Therefore, you may not withhold the witnesses’ or complainant’s identifying information or statements under section 552.108(b)(1).

We note, however, that the submitted documents contain the complainant’s and a witness’ driver’s license information. Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state. Section 552.130, by its terms, only applies to motor vehicle information issued by the State of Texas. Therefore, you must withhold the complainant’s and witness’ Texas driver’s license information. We have marked this information.

We further note that the submitted documents contain the complainant’s and witnesses’ social security numbers. 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 records here are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure on the basis of that federal provision. We caution, however, that section 552.353

of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing the complainant's and witnesses' social security number information, you should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990.

However, under section 552.023 of the Government Code, a person or a person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests. Because both the Social Security Act and section 552.130 of the Government Code protect a person's privacy interest, the department must release to the person or the person's authorized representative the person's social security number and driver's license number. In this request, an attorney requested a copy of the offense report on behalf of his client who was arrested and convicted and whose social security number and driver's license number appear in the requested offense report. Thus, the requestor has a special right of access to this information and the department may not withhold this information.

In summary, you may not withhold any of the submitted information under the informer's privilege or sections 552.103 or 552.108(b)(1) of the Government Code. You must, however, withhold the complainant's and witness' Texas driver's license information as well as the complainant's and witnesses' social security numbers to the extent they were obtained or maintained pursuant to any provision of law enacted on or after October 1, 1990.

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

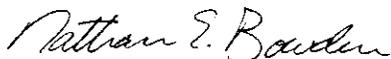
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure 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 Dep't of Pub. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB\er

Ref: ID# 141666

Encl: Submitted documents

cc: Ms. Paige Massey
Attorney at Law
9309 Prince William
Austin, Texas 78730-3418
(w/o enclosures)