



December 4, 2000

Ms. Kristi Laroe
Assistant District Attorney
County of Tarrant
401 West Belknap
Fort Worth, Texas 76196-0201

OR2000-4589

Dear Ms. Laroe:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 141794.

The Tarrant County Narcotics Intelligence and Coordination Unit (the "NICU") received a request for information relating to the arrest of a named individual by the NICU on July 29, 2000. You indicate that you have released to the requestor some of the information that is responsive to the request, contained in records submitted as exhibit C. You have submitted for our review additional records responsive to the request, marked by you as exhibit D. You assert that this information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note at the outset that, among other information, the NICU is required to submit to this office "written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld[.]" Gov't Code § 552.301(e)(1)(A). In addition, the NICU must label the submitted information that is responsive to the request "to indicate which exceptions apply to which parts of the copy." Gov't Code § 552.301(e)(2). If a governmental body does not request an attorney general decision as provided by section 552.301 of the Government Code, the information requested is "presumed to be subject to required disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302. With respect to the section 552.101 and 552.111 assertions, you have submitted no written comments in support of these

exceptions, nor have you labeled any of the information at issue as excepted by these provisions. We therefore conclude the NICU has not requested a decision of our office as provided by section 552.301 with respect to the section 552.101 or 552.111 assertions, thus triggering the section 552.302 presumption of openness. In addition, as to exhibit C, you have evidently redacted certain information without requesting a decision of this office as provided by section 552.301 of the Act. The section 552.302 presumption of openness is thus also triggered with respect to this redacted information.

Section 552.111 of the Act, a discretionary exception, does not demonstrate a compelling reason to withhold information from the public and thereby does not overcome the presumption of openness under section 552.302.¹ We therefore conclude that none of the information in exhibits C or D is excepted by section 552.111 of the Act. However, as explained below, some of the information that was evidently redacted from exhibit C must be withheld under section 552.130 of the Act. Other information redacted from exhibit C, a social security number, may be subject to required withholding under section 552.101 of the Act. Sections 552.130 and 552.101 may provide a compelling reason to withhold information sufficient to overcome the section 552.302 presumption of openness. *See, e.g.*, Open Records Decision No. 150 (1977) (information made confidential by law or that affects third party interests may provide compelling reason for withholding under statutory predecessor to section 552.302).

Section 552.130 of the Act provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 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[.]

We believe this provision is intended to protect the privacy interests of the third parties whose information is at issue. Therefore, in accordance with this provision, the NICU must withhold the Texas driver's license number and license plate number information that was redacted from exhibit C.

¹Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)); 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding); 549 at 6 (1990) (governmental body may waive informer's privilege); 522 at 4 (1989) (discretionary exceptions in general).

Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This provision encompasses information protected by statute. 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.* As to the social security number that was redacted from exhibit C, we have no basis for concluding that this information is 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 Act imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, you should ensure that this information was not obtained or is maintained by the NICU pursuant to any provision of law, enacted on or after October 1, 1990.

We next address the section 552.108 assertion, which we understand pertains to the information in exhibit D. In relevant part, section 552.108 provides:

(a) Information 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:

...

(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[.]

...

(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 [required public disclosure] if:

...

(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[.]

...

(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(a)(2), (b)(2), (c). 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 also* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We assume from your comments that you intended to assert only the above-quoted subsections 552.108(a)(2) and (b)(2). You represent to this office that the information at issue "pertains to a case that the District Attorney's Office declined to prosecute" and you call our attention to specific information contained in exhibit D that confirms this representation. Based on our understanding that the matter has reached a final result other than conviction or deferred adjudication, we conclude you have demonstrated the applicability of subsections 552.108(a)(2) and (b)(2) to the information at issue. Except as provided below, the NICU may therefore withhold the information in exhibit D pursuant to section 552.108 of the Act.

We note that section 552.108 does not except from required public disclosure "basic information" about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe the term "basic information" as used in section 552.108 refers to the types of information held to be public in *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). The NICU must release this information to the requestor. *See also* Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information made public pursuant to *Houston Chronicle*).

Finally, it appears that some of the documents in exhibit D may have been filed with a court. Section 552.022(a)(17) of the Act provides that information that is also contained in a public court record is not excepted from disclosure under the Act, unless the information is expressly confidential under other law. *See* Gov't Code § 552.022(a)(17). Moreover, documents filed with a court are generally considered public. *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Thus, as to any of the records in exhibit D that have been filed with a court, such records are not excepted from disclosure by section 552.108 of the Act and must be released to the requestor. As a discretionary exception under the Act, section 552.108 does not constitute other law that makes this information confidential.

In summary, the NICU must withhold under section 552.130 of the Act the redacted driver's license number and license plate number information contained in exhibit C. As provided above, the redacted social security number in exhibit C may also be subject to required withholding under section 552.101 of the Act. As to exhibit D, except for the basic information and any records that have been filed with a court, which must be released to the

requestor, the NICU may withhold the information in exhibit D pursuant to section 552.108 of the Act.

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).

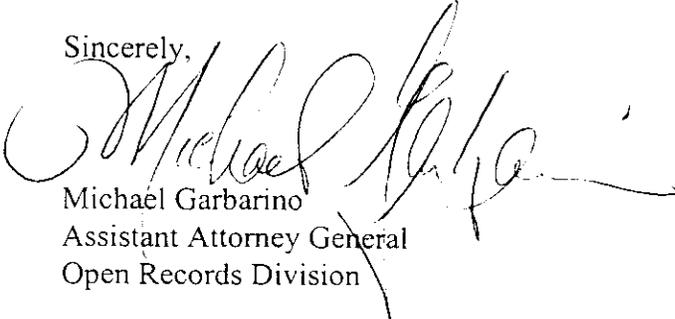
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Hadassah Schloss at 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 Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 141794

Encl. Submitted documents

cc: Mr. Mike Coffey
Coffey Consulting
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Fort Worth, Texas 76185
(w/o enclosures)