



December 18, 2000

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

OR2000-4739

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# 142365.

The Richardson Police Department (the "department") received a request for information pertaining to two named individuals. You state that the department has released a portion of the requested information. You claim that the remaining information is 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:

(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:

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

(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:

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

(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[.]

Gov't Code § 552.108(a)(1)-(2), (b)(1)-(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).

In this instance, you raise subsections (a) and (b) of section 552.108. You contend that “[t]he documents withheld in responsive [sic] to this request are the results of a criminal investigation that has not result [sic] in a conviction or deferred adjudication.” We therefore understand you to be raising section 552.108(a)(2), which excepts from disclosure “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.” Section 552.108(a)(2) is applicable only to a *concluded* investigation or prosecution that did not result in a conviction or a deferred adjudication. *See* Open Records Decision No. 216 (1978) (addressing applicability of statutory predecessor to closed cases). In this instance, you do not assert that any of the cases to which the information in question pertains has reached a final conclusion. However, having carefully reviewed the submitted information, we find that report numbers 00-73490 and 00-55519 pertain to cases that concluded in a result other than a conviction or a deferred adjudication. We therefore conclude that those reports are excepted from disclosure under section 552.108(a)(2).

However, 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). Thus, the department must release the type of information that is considered to be basic front-page offense and arrest report information, even if this information is not actually located on the front page of the offense or arrest report. *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); Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). The department may withhold the remaining information in report numbers 00-73490 and 00-55519 under section 552.108(a)(2). We note that the department has the discretion to release any information contained in these reports that is not confidential by law. *See* Gov't Code §§ 552.007, .101, .352.

You do not assert, and we are unable to find, that report no. 99-10608 pertains to a case that concluded in a result other than a conviction or a deferred adjudication. Consequently, the department may not withhold that report under section 552.108. We note, however, that report no. 99-10608 contains an individual's social security and driver's license numbers. A social security number may be excepted from disclosure under section 552.101 of the Government Code 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.*<sup>1</sup> See Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security number in question is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. 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 the social security number was obtained or is maintained pursuant to such a law and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. See Gov't Code §§ 552.007, .352. Therefore, prior to releasing the social security number, 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.

Section 552.130 of the Government Code governs the disclosure of motor vehicle record information. 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). The department must withhold motor vehicle record information, including a Texas driver's license number, in accordance with section 552.130.

In summary, the department may withhold report numbers 00-73490 and 00-55519 under section 552.108(a)(2), but must release basic information in accordance with section 552.108(c). The department may not withhold report no. 99-10608 under

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<sup>1</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.

section 552.108. However, in releasing that report, the department must withhold social security number information, if that information is confidential under section 552.101, and motor vehicle record information under section 552.130.

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).

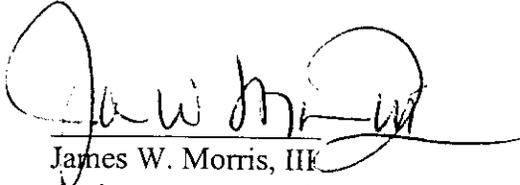
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "M".

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

JWM/er

Ref: ID# 142365

Encl: Submitted documents

cc: Mr. Larry Lecuyer  
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(w/o enclosures)