



December 19, 2000

Mr. G. Chadwick Weaver
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2000-4768

Dear Mr. Weaver:

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# 142448.

The Midland Police Department (the "department") received a request for three specific offense reports. You state that the department has released most of one of the requested offense reports to the requestor. However, as for the two remaining offense reports, and the withheld portion of the one released offense report, you claim that this information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin with the offense reports submitted as Exhibit B, for which you claim section 552.108. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. You explain that the two offense reports submitted as Exhibit B pertain to criminal matters that have concluded and that did not result in conviction or deferred adjudication. Therefore, section 552.108(a)(2) applies to the reports contained in Exhibit B.

However, information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *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). Thus, the department must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page

of these reports.¹ Although section 552.108(a)(2) authorizes the department to withhold the remaining information in these reports from disclosure, you may choose to release all or part of the reports that is not otherwise confidential by law. *See Gov't Code § 552.007.*

In regard to the offense report submitted as Exhibit C, you state that most of this information has been released to the requestor, and that you only seek to withhold a social security number and a Texas driver's license number. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Social security numbers and related records are excepted from disclosure 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 information 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 (1994).* You claim that the social security number contained in Exhibit C falls under the federal Social Security Act because it was obtained pursuant to section 411.086 of the Government Code. That provision contemplates rules that the Department of Public Safety ("DPS") shall adopt in regard to requests for criminal history information. Section 411.086(b)(2) states that such rules "may require a person requesting criminal history information about an individual to submit to [DPS] one or more of the following: . . . (E) any known identifying number of the individual, including social security number"

While you state that the collection of social security numbers "by police officers helps establish identities of criminals," you do not specifically state whether the department obtained or maintained the social security number at issue in order to request criminal history information from DPS. Moreover, you do not inform us as to whether DPS actually requires or required the department to submit the social security number at issue in order to request criminal history information. We find that if the department obtained or maintains the social security number in order to request criminal history information from DPS, and if DPS actually requires or required the department to submit the social security number with its request for criminal history information, then the social security number is confidential under section 411.086 of the Government Code in conjunction with federal law.

Finally, we address the Texas driver's license contained in Exhibit C. Section 552.130 of the Government Code prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, under section 552.130, the department must withhold the Texas driver's license number.

In conclusion, the department may withhold Exhibit B under section 552.108(a)(2), however, it must release front page information from both offense reports under section 552.108(c). As for Exhibit C, the department must withhold the social security number under

¹We note that the front page information that must be released does not include social security numbers or specific motor vehicle information. *See Gov't Code § 552.108(c).*

section 411.086 of the Government Code in conjunction with federal law if the department obtained or maintains the social security number in order to request criminal history information from DPS, and if DPS actually requires or required the department to submit the social security number with its request for criminal history information. The department must withhold the Texas driver's license number in Exhibit C. The department must release any remaining information in Exhibit C if it has not already done so.

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 cursive script that reads "E. Joanna Fitzgerald".

E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\er

Ref: ID# 142448

Encl: Submitted documents

cc: Ms. Candace D. Berry
4900 E. University #1309
Odessa, Texas 79762
(w/o enclosures)