



January 19, 2001

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 13084, Capitol Station
Austin, Texas 78711

OR2001-0198

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143399.

The Department of Criminal Justice (the "department") received a request for the internal affairs investigation report that was the basis for the imposition of employee discipline on the requestor. You have provided the responsive information to this office for review. You claim that the portion of the requested information which you have highlighted 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 first note that the submitted materials include a document which appears to have been filed with a court. Section 552.022 of the Government Code provides several categories of information that are not excepted from required disclosure unless they "are expressly confidential under other law." In pertinent part this section reads:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

- (17) information that is also contained in a public court record

We have marked the submitted information to indicate the document that is subject to section 552.022(a)(17). This document must be released. *See also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992) (identity of rape victim in court records is public information).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses common law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). Applying that standard, our office opined that the identity of juvenile victims of serious sexual offenses is confidential. Open Records Decision No. 628 (1994). We have also held that the identities of victims of serious sexual offenses is confidential. Open Records Decision No. 339 (1982). Also, as "other information, such as the location of the crime, might furnish a basis for identification of the victim," such information is not subject to disclosure. *Id.* We have bracketed the type of information that is protected by the common law right of privacy. That information must be withheld under section 552.101 of the Government Code.

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 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 552.352 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 pursuant to any provision of law, enacted on or after October 1, 1990.

Information about a peace officer or an employee of the Texas Department of Criminal Justice is excepted from public disclosure if the information relates to the home address, home telephone number, or social security number of that employee or reveals whether the individual has family members. Gov't Code § 552.117(2), (3). However, the requestor has a special right of access to his own records. *See* Gov't Code § 552.023. We have underlined the type of information that must be withheld under section 552.117.

Section 552.108 of the Government Code, reads in pertinent part:

- (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:

- (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 the requirements of Section 552.021 if:

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

Information that relates to a pending investigation or prosecution may generally be withheld under section 552.108(a)(1). *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) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). Section 552.108(a)(2) excepts certain law enforcement records in cases that have concluded in a result other than conviction or deferred adjudication. Section 552.108(b)(1) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). When section 552.108(b) is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would interfere with law enforcement. Open Records Decision No. 434 at 3(1986).

In this case, the submitted information relates to an internal affairs investigation of a violation of departmental policy, rather than to a criminal investigation. Investigations into non-criminal matters are not excepted from disclosure by section 552.108 of the Government Code. *Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied) (predecessor statute to section 552.108 not applicable where no criminal investigation resulted). Therefore, section 552.108 does not apply to the responsive information. You also argue that the information that the department received during the course of this internal affairs investigation from a law enforcement agency, which was conducting a related criminal investigation, is excepted from disclosure because the related criminal case was dismissed. However, you do not assert that the law enforcement agency from which this information was obtained seeks to have the information withheld. We conclude that the department does not have a section 552.108 interest in this information. Therefore, no responsive information may be withheld under section 552.108 of the Government Code.

The submitted documents include information that is excepted under section 552.130 of the Government Code. This section governs the release and use of information obtained from motor vehicle records, and provides in relevant part as follows:

(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; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Texas driver's license numbers, VIN numbers, and Texas license plate numbers are subject to section 552.130. The submitted information includes Texas drivers' license numbers. However, the requestor has a special right of access to his own information, therefore the requestor's driver's license number must be released to the requestor. *See* Gov't Code § 552.023. We have placed boxes around the type of information which must be withheld under section 552.130 of the Government Code.

In summary, you must withhold the social security numbers, home addresses, home telephone numbers, and family member information of department employees and peace officers, other than the requestor; Texas drivers' license numbers, other than that of the requestor; and information which would reveal the identity of the alleged victim of sexual assault, except where that information is in a court record. We have marked the submitted materials to indicate the types of information which must be withheld. You must also withhold social security numbers that were obtained or maintained pursuant to any provision of law enacted on or after October 1, 1990. The remaining responsive information must be released.

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).

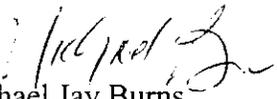
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

MJB/er

Ref: ID# 143399

Encl: Submitted documents

cc: Mr. Gary McAnnally, Sr. District Parole Officer
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(w/o enclosures)