



May 7, 2001

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

OR2001-1859

Dear Mr. Weaver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146862.

The City of Midland (the "city") received a request for information pertaining to a named individual. You have submitted for our review as responsive to the request the information contained in Exhibits B and C. You assert 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.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You assert that Exhibits B and C must be withheld under section 552.101 in conjunction with section 58.007 of the Family Code. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The information in Exhibit B involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, this information is confidential pursuant to section 58.007(c) of the Family Code. You therefore must withhold in its entirety the information in Exhibit B, pursuant to section 552.101 of the Government Code.

The incident described in Exhibit C, however, does not involve a juvenile as an alleged suspect or offender. Section 58.007 of the Family Code is therefore inapplicable to this information. Moreover, you do not assert the applicability of section 552.108 to the information in Exhibit C. Accordingly, except as otherwise noted below, the information in Exhibit C is not excepted from disclosure and must be released to the requestor.

Exhibit C contains Texas driver's license numbers, which we have marked. Section 552.130 of the Government Code 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[.]

You must withhold the Texas driver's license numbers, pursuant to section 552.130.

Exhibit C also contains a one page document which appears to consist of criminal history record information ("CHRI"), evidently obtained by the city police department. CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of

the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. As noted above, the information at issue appears to consist of CHRI generated by TCIC or NCIC. Accordingly, this information, which we have marked, is excepted from disclosure by section 552.101.

Finally, Exhibit C contains social security numbers, which we have marked. 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 at issue are 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 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 by the city pursuant to any provision of law, enacted on or after October 1, 1990.

You refer to section 411.086 of the Government Code which, in pertinent part, provides that DPS may require a person requesting CHRI about an individual to submit to DPS the individual's social security number in connection with the request. You also state that the collection of social security numbers by police officers "helps establish the identities of criminals." It is thus unclear whether any of the social security numbers at issue were obtained and are maintained by the city pursuant to section 411.086 of the Government Code, or whether the information was obtained and is maintained pursuant to a policy or practice of city police officers. We note that any such policy or practice is not a provision of law enacted on or after October 1, 1990, and thus is not a basis for concluding the information is confidential under section 405(c)(2)(C)(viii)(I). To the extent the social security number information was obtained and is maintained by the city pursuant to section 411.086 of the

Government Code, we agree that the information is confidential under section 405(c)(2)(C)(viii)(I).

In summary, exhibit B must be withheld in its entirety under section 552.101 in conjunction with section 58.007 of the Family Code. As for Exhibit C, the city must withhold under section 552.101 in conjunction with chapter 411 of the Government Code the CHRI that we have marked. The remaining documents in Exhibit C must be released, but the city must first redact, pursuant to section 552.130, the Texas driver's license numbers we have marked. As explained above, the city may be required to also redact the social security numbers, pursuant to section 552.101 in conjunction with federal law.

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).

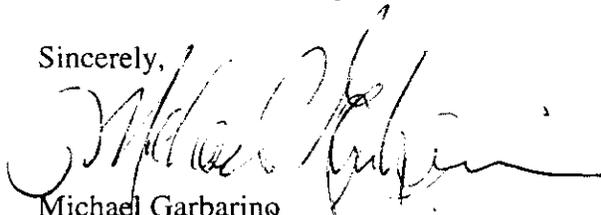
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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# 146862

Encl. Submitted documents

cc: Ms. Melissa Mathis
2907 Mariana Avenue
Midland, Texas 79701
(w/o enclosures)