



November 29, 2001

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

OR2001-5536

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# 157599.

The City of Midland (the "city") received a request for "every document in every case that is a criminal offense" pertaining to Larissa Ann Sellers. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code and section 58.007 of the Family Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming 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 Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); see also Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977).* You state that the requested offense report marked Exhibit "B" relates to a pending criminal prosecution. Based upon this representation, we conclude that the release of the offense report marked Exhibit "B" would interfere with the detection, investigation, or prosecution of crime. *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).*

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or

deferred adjudication. Based on the information you provided, we understand you to assert that the requested information marked Exhibit "C" pertains to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable.

We note, however, that 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, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Although subsections 552.108(a)(1) and (2) authorize you to withhold Exhibits "B" and "C" from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

You claim that the information marked Exhibit "D" consists of juvenile records that are excepted from disclosure under section 58.007 of the Family Code. Section 58.007(c) makes juvenile offender records held by law enforcement agencies expressly confidential. However, section 58.007(c) only applies to juvenile law enforcement records concerning conduct that occurred on or after September 1, 1997.

Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. There are juvenile incidents at issue which occurred in 1993 and 1994. Because incident report numbers 9309200070, 9311130020, 9310260008, 9309200016, 9411040068, 9309200034, and 9401140012 concern juvenile conduct that occurred prior to January 1, 1996, these records are confidential under former section 51.14(d) of the Family Code. The incident reports must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 51.14(d) of the Family Code. The remaining reports in Exhibit "D" are not juvenile records and therefore must be released.

Lastly, you assert that the social security numbers and driver's license information in Exhibit "E" are excepted under sections 552.101 and 552.130, respectively.

Section 552.130(a) of the Government Code excepts from disclosure 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, we agree that you must withhold the Texas driver's license numbers, vehicle identification numbers and license plate numbers under section 552.130(a) of the Government Code. However, we note that section 552.130 protects the privacy of the individual to whom the information

relates. Therefore, the city must release the requestor's Texas driver's license number to her. *See* Gov't Code § 552.023 (an individual who is the subject of information has a special right of access to the information even though it would otherwise be protected from public disclosure by laws intended to protect that person's privacy interests). Furthermore, it appears that the submitted information contains a driver's license number from the state of Mississippi. Section 552.130 only excepts a driver's license number issued by an agency of the state of Texas. Therefore, you may not withhold the Mississippi driver's license number under section 552.130.

The submitted materials also include social security numbers. A social security number or "related record" may be excepted from disclosure under section 552.101 of the Government Code 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.*

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). We note, however, that the requestor has a special right of access to her social security number. Therefore, the city must release the requestor's social security number to her. *See* Gov't Code § 552.023 (an individual who is the subject of information has a special right of access to the information even though it would otherwise be protected from public disclosure by laws intended to protect that person's privacy interests).

In summary, Exhibits "B" and "C" may be withheld pursuant to subsections 552.108(a)(1) and (2). Exhibit "D" contains reports that must be withheld in accordance with section 552.101 of the Government Code in conjunction with section 51.14(d) of the Family Code. There are some reports within Exhibit "D" which must be released as they do not involve juvenile offenders. Finally, Exhibit "E" must be released with Texas driver's license, vehicle identification numbers and license plate numbers redacted in accordance with section 552.130. The driver's license information on the requestor must be released as well as the

Mississippi driver's license number contained in the report pursuant to Government Code sections 552.023 and 552.130 respectively. Finally, the city may be required to redact social security numbers, pursuant to section 552.101 in conjunction with federal law; however, the requestor's social security number must be released to her.

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).

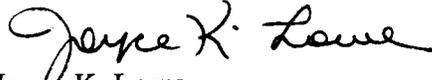
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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); *Tex. Dep't of Pub. 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 Texas Building and Procurement 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,



Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/sdk

Ref: ID# 157599

Enc: Marked documents

c: Ms. Larissa Ann Sellars
17490 Meandering Way #101
Dallas, Texas 75252
(w/o enclosures)