



December 11, 2001

Ms. Mary E. Reveles  
Assistant County Attorney  
Fort Bend County District Attorney's Office  
301 Jackson, Suite 621  
Richmond, Texas 77469-3108

OR2001-5777

Dear Ms. Reveles:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155969.

The Fort Bend County District Attorney's Office (the "district attorney") received a request for the district attorney's file on the requestor's client, with the exception of the notes and work product of any assistant district attorneys. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.<sup>1</sup>

You claim that Exhibit D is subject to the Public Information Act (the "Act") under the judiciary exclusion. Specifically, you indicate that Exhibit D is part of a file maintained by the 13th Judicial Circuit, Hillsborough County, Florida. You further indicate that the 13th Judicial Circuit court has ordered that the records at issue be sealed. Section 552.003 specifically excludes the judiciary from the Act. Here, the district attorney is not part of the judiciary for the purpose of section 552.003. *Holmes v. Morales*, 924 S.W.2d 920, 922 (Tex. 1996). Therefore, the submitted information is not exempt from the application of the

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Act. Nevertheless, we note that section 552.107(2) of the Government Code excepts from required public disclosure information if "a court by order has prohibited disclosure of the information." In reliance on your assertion that the information in Exhibit D has been made confidential by court order, we find that this information must be withheld under section 552.107(2).

With respect to the information in Exhibit E, we note that the information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108 . . . .

Gov't Code § 552.022(a)(1). Exhibit E consists of a completed investigation and is therefore subject to public disclosure unless it is either excepted from disclosure under section 552.108 or confidential under other law. You contend, in part, that Exhibit E is excepted from disclosure under section 552.103 of the Government Code. However, section 552.103 is a discretionary exception and is not other law for the purpose of section 552.022 of the Government Code. *See* Open Records Decision No. 663 (1999) (governmental body may waive section 552.103).

You also appear to contend that the information in Exhibit E is excepted from disclosure under section 552.108 simply because the information is contained in the district attorney's files. In support of your argument, you cite *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). In that case, the Texas Supreme Court interpreted the prior version of section 552.108, and determined that the statute did not expressly require a showing that the release of information would interfere with law enforcement because there was no express statutory language providing for this requirement. *See Holmes*, 924 S.W.2d at 924-25. Rather, the Court determined that as long as the information of the prosecutor dealt with the detection, investigation, or prosecution of crime or was maintained for internal use in matters relating to law enforcement or prosecution, it was excepted under section 552.108. *See id.* at 925.

The legislature has since amended section 552.108. Under the current version, if a law enforcement agency seeks to withhold information that relates to a case that either has not reached a final result or has resulted in conviction or deferred adjudication, the law enforcement agency must demonstrate one of the following: (1) release of the information would interfere with law enforcement or prosecution, (2) the information was prepared by

an attorney representing the state in anticipation of or in the course of preparing for criminal litigation, or (3) the information reflects the mental impressions or legal reasoning of an attorney representing the state. *See* Gov't Code § 552.108(a), (b). You do not demonstrate, nor is it apparent, how the release of Exhibit E would interfere with law enforcement or prosecution efforts. Furthermore, you do not demonstrate that the submitted information was prepared by the district attorney or reflects the legal reasoning or mental impressions of the district attorney. Therefore, we find you may not withhold Exhibit E under section 552.108.

Nevertheless, Exhibit E contains information that must be withheld under section 552.130 of the Government Code. Section 552.130 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[.]

Exhibit E contains several driver's license numbers; however, it is unclear whether all of these numbers relate to a driver's license number issued by an agency of the State of Texas. To the extent the driver's license numbers contained in Exhibit E were issued by an agency of this state, you must withhold the numbers under section 552.130. We note that section 552.130 is designed to protect the privacy interests of third parties. Therefore, section 552.130 does not apply to the information of an individual who is deceased. Attorney General Opinion H-917 at 3-4 (1976); Open Records Decision No. 272 at 1 (1981). Furthermore, the requestor has a right of access to his client's driver's license number, vehicle identification number, and license plate number. *See* Gov't Code § 552.023.

We also note that Exhibit E contains social security numbers that 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 file 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 district attorney pursuant to

any provision of law, enacted on or after October 1, 1990. Even if the social security numbers were obtained pursuant to a provision of law enacted on or after October 1, 1990, the requestor here has a special right of access to his client's social security number. *See Gov't Code § 552.023.*

In summary, you must withhold the information in Exhibit D under section 552.107(2). You must withhold the Texas driver's license information we have marked under section 552.130. You must also withhold the social security numbers we have marked under section 552.101 in conjunction with the Social Security Act to the extent the numbers were obtained or maintained by the district attorney pursuant to a provision of law enacted on or after October 1, 1990. You must release the remainder of the submitted information.

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,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 155969

Enc. Submitted documents

c: Mr. Douglas M. O'Brien  
Moen, Cain & O'Brien  
1800 Chase Bank Building  
707 Travis  
Houston, Texas 77002  
(w/o enclosures)