



December 28, 2001

Mr. Sim W. Goodall  
Police Legal Advisor  
City of Arlington Police Department  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR2001-6126

Dear Mr. Goodall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156721.

The City of Arlington Police Department (the "department") received a request for copies of the personnel files of two specified department police officers and a log of all payments made to one of the officers that were "paid out under the STEP program since 1998." You claim that portions of the requested information are excepted from disclosure pursuant to sections 552.101, 552.103, 552.108, 552.117, 552.119, and 552.122 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that you submitted to our office for review copies of incident and supplemental reports as Exhibit B, a printout from the Tarrant County criminal court system as Exhibit C, and STEP log information as Exhibit D. You do not claim that the information that you have submitted as Exhibits B and C is excepted from disclosure under the Public Information Act (the "Act"). Instead, you note that this information constitutes "one of the items captured by [the requestor's] expansive request." Therefore, we understand you to argue that Exhibits B and C constitute information that is maintained in the department officers' personnel files. We note, however, that your arguments with respect to most of your claimed exceptions to disclosure pertain to personnel file information that is not contained in the submitted documents.

We note that a governmental body that receives a written request for information that it wishes to withhold from disclosure and that it considers to be within one of the exceptions to disclosure under the Act must, within a reasonable time but not later than the fifteenth business day after the date of receiving the written request, submit to the attorney general a copy of the specific information requested or submit representative samples of the requested

information if a voluminous amount of information was requested. *See* Gov't Code § 552.301(e)(1)(D). It appears that you did not submit the department officers' entire personnel files for our review. Therefore, we conclude that the department has waived its 552.103 and 552.122 claims for the personnel file information that was not submitted to us for review. Furthermore, since you did not submit the entire personnel files to us, we cannot determine whether sections 552.101, 552.117, and 552.119 of the Government Code are applicable exceptions to disclosure regarding this information. Accordingly, we conclude that the department must release the remaining portions of the requested personnel file information for both specified department officers to the requestor pursuant to section 552.302 of the Government Code. If you believe that this information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

We note that the personnel file information that you submitted to us as Exhibit B contains a social security number. A social security number or "related record" may be excepted from disclosure pursuant to 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).<sup>1</sup> *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 have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain this social security number. Therefore, we have no basis for concluding that the social security number is confidential pursuant to section 405(c)(2)(C)(viii)(I) of Title 42 of the United States Code. We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security number at issue, the department should ensure that the number was not obtained or is not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

We also note that the personnel file information that you submitted to us as Exhibit B contains a license plate number. Section 552.130 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. *See* Gov't Code § 552.130. Accordingly, we conclude that the department must withhold the Texas license plate number that we have marked from disclosure pursuant to section 552.130 of the Government Code. However, the department must release the remaining portions of Exhibits B and C to the requestor.

You claim that Exhibit D may be excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108(b) provides in pertinent part that an internal record

---

<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

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 disclosure if "release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1). Generally, a governmental body claiming section 552.108 as an exception to disclosure of requested information must demonstrate, 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 or prosecution. See Gov't Code §§ 552.108(a), (b), .301(e)(1)(a); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information in Exhibit D is comprised of Selective Traffic Enforcement Program ("STEP") logs detailing one of the specified department officer's work schedule. Although you contend that these logs are records of the department, you do not explain, nor can we ascertain from our review of the information in Exhibit D, how the release of this information would interfere with law enforcement or prosecution. Accordingly, we cannot conclude that any portion of the submitted information in Exhibit D is excepted from disclosure pursuant to section 552.108 of the Government Code. Consequently, the department must release the entirety of Exhibit D to the requestor.

In summary, the department must release to the requestor the requested personnel file information for both specified department officers that was not submitted to us for review pursuant to section 552.302 of the Government Code. A social security number contained within Exhibit B may be confidential under federal law. The department must withhold from disclosure the Texas license plate number in Exhibit B that we have marked pursuant to section 552.130 of the Government Code. The department may not withhold any portion of Exhibit D pursuant to section 552.108 of the Government Code. The department must release the remaining submitted information to the requestor.

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;

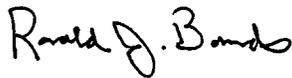
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things 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 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 156721

Enc. Marked documents

cc: Mr. Kenneth D. Hartless  
Attorney at Law  
1223 Ira E. Woods Avenue  
Grapevine, Texas 76051  
(w/o enclosures)