



June 20, 2002

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 76046-9002

OR2002-3345

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164639.

The Garland Police Department (the “department”) received a written request for “the police report pertaining to [a named individual] who was involved in the robbery of the financial business on Kingsley on March 27, 2002.” You state that some responsive information has been released to the requestors. You contend, however, that the remaining information coming within the scope of the request is excepted from required public disclosure pursuant to sections 552.108 and 552.130 of the Government Code.

You specifically contend that the information at issue is excepted from disclosure under subsections 552.108(a)(1) and 552.108(a)(2) of the Government Code. Please note that the protections offered by subsections 552.108(a)(1) and 552.108(a)(2) are, generally speaking, mutually exclusive. Section 552.108(a)(1) generally applies to information held by law enforcement agencies that pertains to pending criminal investigations or prosecutions. Section 552.108(a)(2) protects law-enforcement records that pertain to criminal investigations and prosecutions that have concluded in a result other than a criminal conviction or deferred adjudication.

In this instance, based on the limited information you provided this office, we are unable to determine that the information at issue comes within either subsection. Although you state that this case has not yet been tried, you also state that the case did not result in a conviction

or deferred adjudication. Because this office cannot reconcile these two statements, we conclude that in this instance you have not met your burden of demonstrating the applicability of either section 552.108(a)(1) or 552.108(a)(2). Accordingly, we conclude that the requested information must be released in its entirety, with the following exceptions.

We first note that the submitted records contain an individual's social security number. This office concluded in Open Records Decision No. 622 at 3 (1994) that amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential any social security number obtained or maintained by any "authorized person" pursuant to any provision of law, enacted on or after October 1, 1990, and that any such social security number is therefore excepted from required public disclosure by section 552.101 of the Government Code. However, this office has no basis for concluding that the social security number at issue was obtained or is maintained pursuant to such a statute and is therefore confidential under section 552.101 of the Government Code in conjunction with section 405(c)(2)(C)(viii)(I). We caution, 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, the department should ensure that this number was not obtained and is not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

We also note that section 552.130(a)(1) of the Government Code requires the department to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Accordingly, the department must withhold the Texas driver's license numbers contained in the documents at issue pursuant to section 552.130(a)(1) of the Government Code. Also, section 552.130(a)(2) of the Government Code requires the withholding of information relating to "a motor vehicle title or registration issued by an agency of this state." Consequently, the department must withhold the Texas license plate numbers contained in the submitted records pursuant to section 552.130(a)(2). The remaining submitted information must be released to the requestors, except as discussed above.

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 A. Pearle
Assistant Attorney General
Open Records Division

MAP/RWP/sdk

Ref: ID# 164639

Enc: Submitted documents

c: Mr. & Mrs. Joe Combs
980 Old Millwood Road
Rockwall, Texas 75087
(w/o enclosures)