



June 20, 2002

Mr. Lou Bright  
General Counsel  
Texas Alcoholic Beverage Commission  
P.O. Box 13127  
Austin, Texas 78711-3127

OR2002-3351

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164641.

The Texas Alcoholic Beverage Commission (the "TABC") received a request for a certified copy of the TABC offense report against Speedy Pak Grocery on July 31, 1999. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses confidentiality provisions such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred.<sup>1</sup> 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:

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<sup>1</sup>See Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code).

- (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.

The submitted report generated by the Midland Police Department includes information involving 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. On behalf of the Midland Police Department, you must withhold the police report from disclosure in its entirety under section 552.101 of the Government Code, along with the police department's telefaxed cover sheet. However, the remaining submitted information does not involve conduct committed by a juvenile suspect. Therefore, this information may not be withheld under section 552.101 in conjunction with section 58.007 of the Family Code.

The remaining information does, however, contain information that must be withheld. Section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Therefore, you must withhold the driver's license numbers we have marked under section 552.130.

Further, the social security number contained in the information may be confidential under federal law. A social security number may be withheld in some circumstances 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 this social security number is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, you should ensure that it was not obtained or is not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In summary, you must withhold the submitted police report and cover sheet on behalf of the Midland Police Department under section 552.101. You must withhold the driver's license

numbers we have marked under section 552.130. The social security number we have marked may be confidential under section 552.101 and federal law. The remaining information must be released.

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,

A handwritten signature in cursive script that reads "Kristen Bates". The signature is written in black ink and is positioned above the typed name.

Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 164641

Enc. Submitted documents

c: Mr. Abner Burnett  
316 North Texas  
Odessa, Texas 79761  
(w/o enclosures)