



July 15, 2002

Ms. Janis Kennedy Hampton  
Assistant City Attorney  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805

OR2002-3811

Dear Ms. Hampton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165668.

The Bryan Police Department (the “department”) received a written request for certain police reports pertaining to the requestor and another named individual. You state that some responsive information has been released to the requestor. You contend, however, that the remaining information coming within the scope of the request, a representative sample of which you submitted to this office, is exempted from required public disclosure pursuant to section 552.108(a)(2) and (b)(2) of the Government Code.<sup>1</sup>

Sections 552.108(a)(2) and 552.108(b)(2) of the Government Code exempt from required public disclosure information held by a law enforcement agency “only in relation to an investigation that did not result in conviction or deferred adjudication.” In this case, you have provided this office conflicting information with regard to one of the submitted offense reports, and we are unable to conclude that either section 552.108(a)(2) or 552.108(b)(2) is applicable to that report. You have marked case number 02-040096 to indicate that the case is “active.” However, you state that the investigation of that case “did not result in

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<sup>1</sup>In reaching our conclusion here, 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 No. 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.

conviction or deferred adjudication.” In light of the fact that the records before us indicate that the investigation is active, it is not clear to this office whether the investigation is closed. We cannot reconcile this apparent conflict. Consequently, the department may not withhold the supplemental report on case number 02-040096 from the requestor based on either section 552.108(a)(2) or 552.108(b)(2) of the Government Code. Because you have raised no other exception to required public disclosure, we conclude that the department must release the report on case number 02-040096 in its entirety, with the following exceptions.

We first note that the report on case number 02-040096 contains the suspect’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.<sup>2</sup> 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 the report on case number 02-040096 contains the suspect’s driver’s license number. 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.” Consequently, the department must withhold this driver’s license number pursuant to section 552.130(a)(1) if the driver’s license was issued in Texas.

We now address whether the other offense report you submitted to our office may be withheld from the public. You inform us, and the records reflect, that case number 00-121065 concerns a police investigation that concluded in a result other than a conviction or deferred adjudication. We therefore conclude that you have met your burden of establishing the applicability of section 552.108(a)(2) to this case number. Accordingly, the department may withhold most of this report pursuant to section 552.108(a)(2). Section 552.108 does not, however, except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e.*

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<sup>2</sup>Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”

*per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic offense and arrest information, which includes a detailed description of the alleged offense, the department may withhold case number 00-121065 pursuant to section 552.108(a)(2) of the Government Code.

In summary, the department must release the report on case number 02-040096 in its entirety except for the suspect's driver's license number, which must be withheld pursuant to section 552.130(a)(1) of the Government Code. The department must also withhold from the report on case number 02-040096 the suspect's social security number if it is made confidential under federal law. On the other hand, the department may withhold most of the information contained in the report on case number 00-121065 pursuant to section 552.108(a)(2), but must release all "basic information" contained in this report.

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,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/RWP/sdk

Ref: ID# 165668

Enc: Submitted documents

c: Ms. Ann Troutmen  
c/o Janis Kennedy Hampton  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805  
(w/o enclosures)