



October 3, 2002

Lt. Arturo Valdez
Central Records Division
McAllen Police Department
P.O. Box 220
McAllen, Texas 78502-0220

OR2002-5575

Dear Lt. Valdez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170173.

The McAllen Police Department (the "department") received a request for copies of information pertaining to two case numbers. You state that the department has already released to the requestor "front page" offense report information from one of the case numbers. *See Gov't Code § 552.108(c)* (stating that basic information regarding crime not excepted from disclosure under Gov't Code § 552.108; *see also Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information, including detailed description of offense). You claim, however, that some of the remaining requested information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

We note at the outset that the department did not submit any responsive information to us pertaining to case number 02-5507. We, therefore, presume that the department has already provided the requestor with this information to the extent that it exists. If not, the department must do so at this time. *See Gov't Code §§ 552.006, .301, .302*; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

You claim that the remaining portions of case number 98-31941 are excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108(a) provides in pertinent part that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Section 552.108(b) provides in pertinent part that an internal record 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 remaining information in this case number relates to a case in which the associated investigation is ongoing. However, we note that case number 98-031941 pertains to an alleged assault that occurred on October 6, 1998. Although you state that this particular case is still being investigated by the department, it appears that the statute of limitations has already run for this matter. *See* Penal Code § 22.01; *see also* Crim. Proc. Code, arts. 12.01, .02. You have not adequately explained how or why the release of the remaining information pertaining to this particular case "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a). Therefore, we conclude that the department may not withhold any portion of the remaining information from disclosure under section 552.108 of the Government Code.

However, we note that the remaining information at issue contains a social security number. A social security number or "related record" may be excepted from disclosure under 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).¹ *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or 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 it is confidential under section 405(c)(2)(C)(viii)(I). 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 marked social

¹ 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 from disclosure by other statutes.

security number, the department 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.

We also note that the remaining information at issue contains Texas driver's license information that is subject to section 552.130 of the Government Code. Section 552.130 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 from disclosure the Texas driver's license information that we have marked pursuant to section 552.130 of the Government Code.

In summary, the department must release to the requestor all responsive information pertaining to case number 02-5507 to the extent that it exists and has not already been provided to the requestor. A social security number contained within case number 98-031941 may be confidential under federal law. The department must withhold from disclosure the Texas driver's license information that we have marked in case number 98-031941 pursuant to section 552.130 of the Government Code. The department must release to the requestor all of the remaining information in case number 98-031941 that has not already been provided 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. 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 170173

Enc. Marked documents

cc: Ms. Elva P. Longoria
317 Cardinal
McAllen, Texas 78504
(w/o enclosures)