



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

March 19, 2003

Mr. G. Chadwick Weaver  
First Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR2003-1888

Dear Mr. Weaver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178083.

The City of Midland (the "city") received a request for police incident reports numbers 9909260044, 0103120009, and 021230054. You state that you have released most of report numbers 9909260044 and 021230054 and the basic information from report number 0103120009. However, you claim that the remaining requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code and under the federal Social Security Act. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, we understand you to assert that Exhibit B pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that, with the exception of basic information which you indicate you have released, the city may withhold Exhibit B under section 552.108(a)(2).<sup>1</sup>

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<sup>1</sup> Based on this finding, we need not reach your arguments under section 552.130 and the Social Security Act for the information in Exhibit B.

You contend that portions of Exhibit C are excepted from public disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, the city must withhold the Texas driver's license numbers contained in Exhibit C under section 552.130.

Next, you contend that the social security numbers contained in the submitted information are confidential under the federal Social Security Act. 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). *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 indicate that the social security numbers at issue were obtained or are maintained by the city's police department for the purpose of obtaining criminal history information. However, you do not specifically state whether the city obtained or maintained the social security numbers at issue in order to request criminal history information. Moreover, you do not inform us as to whether DPS actually requires or required the city to submit the social security numbers at issue in order to request criminal history information. We find that if the city obtained or maintains the social security numbers in order to request criminal history information from DPS, and if DPS actually requires or required the city to submit the social security numbers with its request for criminal history information, then the social security numbers are confidential pursuant to section 405(c)(2)(C)(viii)(I) of Title 42 of the United States Code on the basis of section 411.086(b)(2) of the Government Code. If the city did not obtain or maintain the social security numbers pursuant to a provision of law enacted on or after October 1, 1990, the social security numbers are not confidential under the Social Security Act and they must be released.

In summary, you may withhold Exhibit B, with the exception of basic information, under section 552.108(a)(2). You must withhold the Texas driver's license numbers in Exhibit C under section 552.130. Social security numbers in Exhibit C may be confidential under federal law.

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 Dep't of Pub. 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,



Jennifer E. Berry  
Assistant Attorney General  
Open Records Division

JEB/sdk

Ref: ID# 178083

Enc: Submitted documents

c: Ms. Sherrye Roach  
4308 Country Club Drive  
Midland, Texas 79703  
(w/o enclosures)