



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

April 2, 2003

Chief Don Hatcher
Leander Police Department
P.O. Box 319
Leander, Texas 78646-0319

OR2003-2230

Dear Chief Hatcher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178721.

The Leander Police Department (the "department") received a request for information relating to an investigation of an automobile accident. You state that the department has released the accident report and basic front-page information. *See* Transp. Code § 550.065; Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (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 at 3-4 (1976). You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We begin with your claim under section 552.108 of the Government Code, as it is the most inclusive exception you raise. Section 552.108(a)(1) excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to that information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You claim that the release of the information submitted as Exhibit C would interfere with a pending investigation. We note, however, that the information at issue relates to an arrest made on September 23, 1999, for an alleged violation of section 550.022 of the Transportation Code. *See* Transp. Code § 550.022. A violation of section 550.022 is a

misdemeanor offense. *Id.* § 550.022(c). An indictment or information for any misdemeanor must be presented within two years from the date of the commission of the offense. *See* Crim. Proc. Code art. 12.02. You do not inform us, and the submitted information itself does not otherwise reflect, that the arrest to which Attachment C pertains has resulted in a prosecution. Accordingly, it clearly appears to this office that the statute of limitations for commencing any such prosecution has expired. Therefore, we conclude that you have not demonstrated that section 552.108(a)(1) is applicable in this instance. *See 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) (court delineates law enforcement interests that are present in active cases). Therefore, you may not withhold any of the submitted information under section 552.108 of the Government Code.

We note, however, that Attachment C contains the arrested person's social security number. A social security number may be excepted from disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number pursuant to any provision of law enacted on or after October 1, 1990.¹ *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security number contained in Attachment C is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes the department to obtain or maintain a social security number. Thus, we have no basis for concluding that the social security number in question was obtained or is maintained pursuant to such a law and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing a social security number, the department should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

We also note that Attachment C contains driver's license, license plate, and vehicle identification numbers. Section 552.130 of the Government Code excepts from public disclosure information that 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[.]

¹Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential.

Gov't Code § 552.130(a)(1)-(2). We have marked the driver's license, license plate, and vehicle identification numbers that appear in Attachment C. To the extent that these are Texas driver's license, license plate, and vehicle identification numbers, they must be withheld from disclosure under section 552.130.

In summary, Texas driver's license, license plate, and vehicle identification numbers must be withheld from disclosure under section 552.130 of the Government Code. The arrested person's social security number may be excepted from disclosure under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. The department must release the rest of the requested information.

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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 178721

Enc: Submitted documents

c: Mr. Ross Ehlinger
2525 Wallingwood, Suite 800
Austin, Texas 78746
(w/o enclosures)