OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 6, 2003

Mr. Loren B. Smith
Olson & Olson
333 Clay Street, Suite 3485
Houston, Texas 77002

OR2003-3050

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180573.

The City of Friendswood (the "city"), which you represent, received a written request for a complete copy of a particular incident report. You indicate that some of the responsive information has been released to the requestor. You contend, however, that the remaining information coming within the scope of the request is excepted from required disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

You first contend that the requested records are made confidential under section 58.007 of the Family Code and thus must be withheld from the public pursuant to section 552.101 of the Government Code. Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) Section 58.007(c) of the Family Code provides in pertinent part:

> (c) Except as provided by Subsection (d), law enforcement records and files concerning a child may not be disclosed to the public and shall be:
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> (1) kept separate from adult files and records; and
>
> (2) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

We note, however, that the information you seek to withhold under section 58.007 pertains to an individual who was seventeen years of age at time of the incident. Section 51.02(2)(A) of the Family Code defines "child" for purposes of section 58.007 as a "person who is . . . ten years of age or older and under 17 years of age." Consequently, the release of the requested information is not governed by section 58.007. The city therefore may not withhold any of the submitted information on these grounds.

You also contend that the submitted incident report may be withheld pursuant to sections 552.108(a)(2) and 552.108(b)(2) of the Government Code, which except 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 the submitted incident report, and we are unable to conclude that either section 552.108(a)(2) or 552.108(b)(2) is applicable to that report. Although you state that the investigation of that incident "did not result in conviction or deferred adjudication," the last entry in the incident report reflects the fact that the investigation is still on-going. You do not explain this apparent inconsistency. In light of the fact that the records before us indicate that the investigation is active, we are unable to conclude that the investigation is closed for purposes of section 552.108. Consequently, the city may not withhold the incident report from the requestor based on either section 552.108(a)(2) or 552.108(b)(2) of the Government Code.

The incident report contains a social security number that is excepted from required public 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 the social security number was obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). It is not apparent to us that the social security number contained in the records at issue was obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we are aware of any law, enacted on or after October 1, 1990, that authorizes the city to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue was obtained or maintained pursuant to such a statute and is, therefore, confidential under 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 city should ensure that this number was not obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.[1]

The incident report also contains an individual's Texas driver's license number. Section 552.130(a)(1) of the Government Code requires the city to withhold "information

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[1]We note, however, that the requestor has a special right of access to her own social security number. *See* Gov't Code § 552.023.

[that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Accordingly, the city must withhold the Texas driver's license number that we have marked pursuant to section 552.130(a)(1) of the Government Code.[2] Because you have raised no other applicable exception to required public disclosure, we conclude that the city must release the remainder of the incident 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 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

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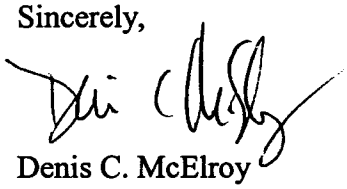
[2]We note, however, that the requestor has a special right of access to her own driver's license number. *See* Gov't Code § 552.023.

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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/RWP/seg

Ref: ID# 180573

Enc: Submitted documents

c: Ms. Margaret Ryan
310 Colonial Drive
Friendswood, Texas 77546
(w/o enclosures)