



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

July 29, 2003

Mr. J. David Dodd, III  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR2003-5176

Dear Mr. Dodd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185033.

The City of DeSoto (the "city"), which you represent, received a request for information relating to a motor vehicle accident involving a city police officer. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

We first note that the submitted documents include an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) to provide for the release of an accident report to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. Under this provision, the Texas Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the governmental entity with two or more of the three items of information specified by the statute. *Id.* In this instance, the requestor has provided two of the three required items of information. Therefore, the accident report that we have marked must be released to the requestor under section 550.065(b) of the Transportation Code.<sup>1</sup>

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<sup>1</sup>As a general rule, statutes outside chapter 552 of the Government Code that expressly make certain information public prevail over exceptions to required public disclosure under chapter 552. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989).

Next, we address the city's claim under section 552.108 of the Government Code with regard to the rest of the submitted information. 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[.]" Section 552.108(b)(1) excepts from disclosure "[a]n 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 . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]" A governmental body that claims an exception to disclosure under 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 assert that the release of the remaining information "would interfere with the further investigation and prosecution of the crime, as well as future investigation, detection and prosecution of crime." You also contend that "[t]he documents reveal the methods and process of a criminal investigation." We note, however, that the remaining information relates to an internal investigation of a city police officer's involvement in a traffic accident. Section 552.108 of the Government Code is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to Gov't Code § 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). You do not inform us, and the submitted information does not otherwise reflect, that the investigation of the traffic accident resulted in a criminal investigation or prosecution. We therefore find that you have not demonstrated that section 552.108(a)(1) is applicable to the remaining submitted information. *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). Likewise, you have not explained, and the remaining information does not supply any explanation on its face, either how or why release of any of the remaining information would interfere with law enforcement and crime prevention. *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet. h.) (Gov't Code § 552.108(b)(1) protects "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State."). Thus, we conclude that you have not demonstrated that section 552.108(b)(1) is applicable to any of the remaining information. *See also* Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected by statutory predecessor to Gov't Code § 552.108), 252 at 3 (1980) (governmental body did not meet its burden under statutory predecessor because it did not indicate why investigative procedures and techniques requested were any different from those commonly known). We therefore conclude that the city may not withhold any of the remaining information under section 552.108.

We note, however, that the city must withhold some of the remaining information under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from required public disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether a peace officer has family members, regardless of whether the peace officer has complied with sections 552.024 or 552.1175. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. We have marked the information that the city must withhold under section 552.117(a)(2).

The remaining information also includes the social security number of a member of the public. This social security number may be excepted from 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 it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990.<sup>2</sup> *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security number in question here 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 city to obtain or maintain a social security number. Thus, we have no basis for concluding that this social security number was obtained or is maintained pursuant to such a law and is therefore confidential under the federal law. We caution the city, 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 to the public, the city should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

The remaining information also appears to contain photographs of one or more police officers. Section 552.119 of the Government Code excepts from public disclosure a photograph of a peace officer that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies.<sup>3</sup> The three exceptions under section 552.119 are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. Section 552.119 also provides that a photograph exempt from disclosure under this section

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<sup>2</sup>Section 552.101 excepts from 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. Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because chapter 552 of the Government Code prescribes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).

<sup>3</sup>Section 552.119 also adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure.

may be made public only if the peace officer gives written consent to the disclosure. *See* Open Records Decision No. 502 (1988). You do not inform us, and there is no other indication in this instance, that any of the exceptions under section 552.119 is applicable or that any officer to whom the submitted information pertains has executed any written consent to the disclosure of the officer's photograph. Therefore, assuming that the photographic images that we have marked depict a peace officer, the city must withhold the marked information under section 552.119.

Lastly, we note that the remaining documents contain driver's license and license plate information and that the submitted photographs also contain license plate information. 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[.]

Gov't Code § 552.130(a)(1)-(2). Information relating to a Texas driver's license or a Texas license plate number must be withheld from the public under section 552.130. We have marked information relating to a Texas driver's license that the city must withhold under section 552.130. We also have marked another driver's license number that must be withheld under section 552.130 if it is a Texas driver's license number. The Texas license plate numbers that are contained in the submitted documents and photographs also must be withheld from the public under section 552.130. We have marked the types of information in the submitted documents that section 552.130 excepts from public disclosure. We note, however, that the requestor identifies herself as a representative of the automobile insurer of a private individual to whom one of the license plate numbers pertains. As such, the requestor may have a right of access to that individual's Texas license plate number. *See* Gov't Code §§ 552.023(a), .222(c).<sup>4</sup> If the requestor has a right of access to the private individual's Texas license plate number, then that information may not be withheld from the requestor under section 552.130.

In summary, the city must withhold a peace officer's home address and telephone number, social security number, and family member information under section 552.117(a)(2) of the Government Code. The social security number of a member of the public may be excepted

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<sup>4</sup>Section 552.023(a) provides that a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and is protected from public disclosure by laws intended to protect that person's privacy interests. Section 552.222(c) provides that if the requested information relates to a motor vehicle record, as defined by section 730.003 of the Transportation Code, the officer for public information or the officer's agent may require the requestor to provide additional identifying information sufficient for the officer or agent to determine whether the requestor is eligible to receive the information under chapter 730 of the Transportation Code.

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 city must withhold a peace officer's photograph from the public under section 552.119. The city must withhold Texas driver's license and license plate information from the public under section 552.130. The requestor may have a right of access to the private individual's Texas license plate number. The city must release the rest of the submitted 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).

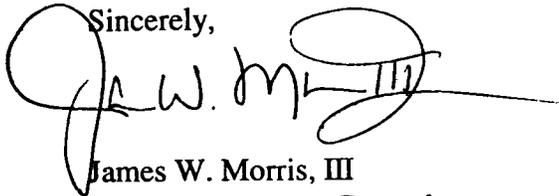
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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". The signature is stylized with a large initial "J" and a long horizontal stroke extending to the right.

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

JWM/sdk

Ref: ID# 185033

Enc: Submitted documents

c: Mr. Malcolm McGregor  
United Services Automobile Association  
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(w/o enclosures)