



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2003

Ms. Michele Austin
Assistant City Attorney
City of Houston - Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2003-6751

Dear Ms. Austin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188273.

The Houston Police Department (the "Department") received a request for information relating to a specified "a hit and run accident[.]" You assert the requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We reviewed the information you submitted and considered the exceptions you claim.

First, we address your assertion under section 552.108(a)(1), which states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain how and why section 552.108 is applicable to the 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) (law enforcement agency must explain how release of particular records or parts thereof will interfere with law enforcement or prosecution). You state that Exhibit 2 relates to a criminal investigation that is inactive pending additional leads. You also inform us that the statute of limitations has not expired and that the investigation may be reactivated once additional leads are developed. However, we note that a misdemeanor offense has a two-year statute of limitations and most felonies have a three-year statute of limitations. Based on our review of the submitted information, we find that it concerns an offense that occurred in 1998. Further, you have not provided us with any information which would permit an extension of the statute of limitations for this

offense or the application of a different statute of limitations. *See, e.g.*, Crim. Proc. Code art. 12.01(1), .05. Thus, we find that you have not adequately demonstrated the applicability of section 552.108. Accordingly, we conclude that the Department may not withhold the submitted information under section 552.108 of the Government Code.

Next, we note the applicability of section 552.101 of the Government, which excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the doctrine of common-law privacy and information made confidential by other statutes.

Common-law privacy protects information when (1) it contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the information. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history), 523 (1989) (credit reports, financial statements, and other personal financial information), 373 (1983) (assets and income source information); and some medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). In this instance, Exhibit 2 contains information protected by common-law privacy. Therefore, the Department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We note that although Exhibit 2 contains personal financial information, we find the public has a legitimate interest in this information. Thus, the Department may not withhold the personal financial information under common-law privacy.

Further, we note that the submitted offense report contains social security numbers that may be confidential under federal law. A social security number 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.* We have no basis for concluding that the social security numbers in the responsive records are confidential under section 405(c)(2)(C)(viii)(I), and therefore, excepted from public

disclosure under section 552.101 and the referenced federal provision. However, we caution the Department that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number, you should ensure that no such information was obtained or is maintained by the Department pursuant to any provision of law enacted on or after October 1, 1990.

Last, as you acknowledge, the submitted documents contain information subject to section 552.130 of the Government Code. This provision excepts from public disclosure information relating to a driver's license or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code § 552.130.* Here, the submitted information contains driver's license numbers, a license plate number and an associated expiration date, and a vehicle identification number. Therefore, the Department must withhold the information pertaining to motor vehicle records, which you have highlighted and we have marked, under section 552.130 of the Government Code.

In summary, the Department must withhold the information we have marked under section 552.101 of the Government Code and common-law privacy. Also, the Department must withhold the social security numbers under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, if applicable. The Department must withhold the motor vehicle record information you have highlighted and we have marked under section 552.130 of the Government Code. The Department must release the remainder of Exhibit 2 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 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/CHS/seg

Ref: ID# 188273

Enc: Submitted documents

c: Mr. Jeremy R. Newell
Stevenson & Ammons
3700 Montrose Boulevard
Houston, Texas 77006
(w/o enclosures)