



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 21, 2003

Mr. Mark G. Mann  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR2003-7536

Dear Mr. Mann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189773.

The Garland Police Department (the "department") received a request for (1) all service calls and outcome reports for a specified address from July 1, 2002 to July 16, 2003; (2) all 911 calls and 911 hangup calls for the same address from July 10 to 12, 2002; (3) a videotape and an arrest and incident report involving a named individual on a specified date; (4) a videotape and an incident report involving the same individual on another specified date; and (5) all service calls in a specific block of a particular street between July 11 and December 29, 2002. You inform us that the department has no information that is responsive to parts 2 or 4 of the request. We note that chapter 552 of the Government Code does not require the department to release information that did not exist when it received this request or to create responsive information.<sup>1</sup> You also inform us that the department has released some of the information that is responsive to parts 1 and 3 of the request and all of the information that is responsive to part 5. You claim that other responsive information is excepted from disclosure under sections 552.101, 552.108, 552.119, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

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<sup>1</sup>See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

We first note that you have submitted what appears to be the remaining service call and outcome report information that is responsive to part 1 of the request. However, you have submitted no arguments as to how or why the remaining service call and outcome report information is excepted from disclosure. Therefore, that information must be released. *See* Gov't Code §§ 552.301, 302; Open Records Decision No. 664 (2000).

Next, we address your claim under section 552.101 of the Government Code. This section excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information that another statute makes confidential. A social security number is excepted from disclosure under section 552.101 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. *See* Open Records Decision No. 622 at 2-4 (1994). You assert that a social security number contained in the submitted information is excepted from disclosure under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of the federal law because the social security number was obtained and is maintained as part of the department's arrest or incident/investigation records. You do not inform us, however, that this social security number was obtained or is maintained under any particular provision of law that was enacted on or after October 1, 1990. Furthermore, we are not otherwise informed of any 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 the submitted 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.

The department also raises section 552.108 of the Government Code. This section provides in part:

(a) 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:

- (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2).<sup>2</sup> Generally speaking, these provisions of section 552.108 serve mutually exclusive purposes. Section 552.108(a)(1) protects information held by a law enforcement agency or prosecutor, the release of which would interfere with the detection, investigation, or prosecution of crime. Section 552.108(a)(2) is applicable only to law enforcement information pertaining to a concluded case that did not result in a criminal conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *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).

In this instance, the department seeks to withhold portions of the responsive incident and arrest reports and the submitted videotape under section 552.108. You explain that the department collected this information in connection with a criminal investigation. You inform us that this information relates to a case that has been set for trial and whose final disposition is still pending. You also state that at the time of your request for this decision, the information in question related to an investigation that had not resulted in a conviction or a deferred adjudication. Having considered your representations, we find that you have 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). We therefore conclude that the department may withhold the yellow-highlighted portions of the incident and arrest reports and the videotape under section 552.108.

Lastly, we address your claim under section 552.130 of the Government Code. This section 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). Section 552.130(a)(1) is applicable to Texas driver's license information. Section 552.130(a)(2) is applicable to a Texas license plate number.

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<sup>2</sup>Section 552.108(a)(4) protects information that "is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation" or that "reflects the mental impressions or legal reasoning of an attorney representing the state" *See* Gov't Code § 552.108(a)(4)(A)-(B). This provision of section 552.108 is applicable to information prepared or held by a prosecutor. You do not indicate that any of the information that the department seeks to withhold under section 552.108 comes within the scope of section 552.108(a)(4).

We agree that the Texas driver's license and license plate information that you have highlighted in orange is excepted from disclosure under section 552.130.

In summary, the department may be required to withhold the submitted social security number under section 552.101 of the Government Code in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. The department may withhold the highlighted portions of the incident and arrest reports and the videotape under section 552.108. The department must withhold the Texas driver's license and license plate information under section 552.130. The rest of the submitted information must be released. As our determinations under sections 552.101, 552.108, and 552.130 are dispositive, we need not address your claim under section 552.119.

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).

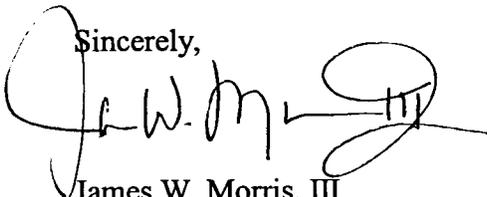
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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', written over a large, stylized circular flourish.

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

JWM/sdk

Ref: ID# 189773

Enc: Submitted documents

c: Ms. Ginger Allen  
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(w/o enclosures)