



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 25, 2003

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

OR2003-8536

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# 191804.

The Garland Police Department (the "department") received a request for information involving a named individual and a specified date. You claim that some of the 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 raise and have reviewed the information you submitted.

We first note that the submitted information includes arrest warrants and the supporting affidavits for the warrants. The 78th Legislature recently amended article 15.26 of the Code of Criminal Procedure to add language providing:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, *is public information*, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Act of May 31, 2003, 78th Leg., R.S., ch. 390, § 1, 2003 Tex. Sess. Laws Serv. 1631 (to be codified as amendment to Crim. Proc. Code art. 15.26) (emphasis added). Thus, arrest

warrants and affidavits for arrest warrants that have been presented to a magistrate are made public and must be released under article 15.26 of the Code of Criminal Procedure. As a general rule, the exceptions to disclosure found in chapter 552 of the Government Code do not apply to information that is made public by other statutes. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, to the extent that the arrest warrants and affidavits that we have marked were presented to a magistrate, they must be released to the requestor under article 15.26 of the Code of Criminal Procedure.

Next, we address your claims with regard to the remaining information. Section 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. A social security number is confidential 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 it was obtained or is maintained by a governmental body under any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). You contend that a responsive social security number is confidential 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 the social security number in question was obtained or is maintained under any specific provision of law 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 or requires 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 social security number that you have highlighted, the department should ensure that it was not obtained and is not maintained under any provision of law enacted on or after October 1, 1990.

Section 552.101 of the Government Code also encompasses the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency compiles criminal history information with regard to a particular individual, the compiled information takes on a character that implicates that individual's right to privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). Thus, to the extent that the requested information depicts the named individual as a criminal suspect, arrestee, or defendant and

does not relate to conduct that occurred on the date supplied by the requestor, any such information must be withheld from the requestor under section 552.101 of the Government Code in conjunction with *Reporters Committee*.

Next, we address your claim under 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).¹ Generally speaking, these provisions of section 552.108 are applicable to two mutually exclusive types of law enforcement information. Section 552.108(a)(1) applies if the release of the information at issue would interfere with a pending investigation or prosecution. Section 552.108(a)(2) is applicable only if the information in question pertains 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).

You raise section 552.108 with regard to portions of the submitted information. You explain that the department collected the information in question in connection with a criminal investigation. You inform us that this information relates to a case that has been filed with the district attorney's office and that "the disposition of this incident 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*

¹Section 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).

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 submitted information 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 information that relates to a Texas driver's license. Section 552.130(a)(2) encompasses information that relates to a Texas license plate or vehicle identification number. We agree that the Texas driver's license and motor vehicle information that you have highlighted in orange is excepted from disclosure under section 552.130. We have marked one other item of information that you must also withhold under section 552.130.

In summary: (1) you must release the arrest warrants and the affidavits for the arrest warrants that have been presented to a magistrate under article 15.26 of the Code of Criminal Procedure; (2) the highlighted social security number may be confidential 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; (3) any information that depicts the named individual as a criminal suspect, arrestee, or defendant and does not relate to conduct that occurred on the date supplied by the requestor must be withheld under section 552.101 in conjunction with *Reporters Committee*; (4) you may withhold the yellow-highlighted information under section 552.108(a)(1); and (5) you must withhold the Texas driver's license number, license plate information, and vehicle identification number under section 552.130. You 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).

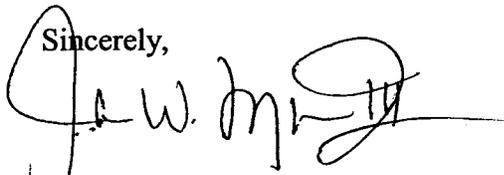
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

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

JWM/sdk

Ref: ID# 191804

Enc: Submitted documents

c: Ms. Sofia Delgado
1006 Cedar Drive
Garland, Texas 75040
(w/o enclosures)