



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2003

Mr. Ken Johnson
Assistant City Attorney
City of Waco
P. O. Box 2570
Waco, Texas 76702-2570

OR2003-8868

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192542.

The Waco Police Department (the "department") received a request for information pertaining to two department reports. You state that the department will release some responsive information to the requestor. You claim, however, that portions of the requested information are excepted from disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that a social security number that you highlighted within the submitted information is excepted from disclosure pursuant to 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).¹ These amendments make confidential social security numbers and related records that are obtained or 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* Open Records Decision No. 622 (1994). You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990 that authorizes the department to obtain or maintain

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

social security numbers. Therefore, we have no basis for concluding that such numbers are confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing this social security number, the department should ensure that it was not obtained and is not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

You also claim that portions of the submitted information are excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) protects records pertaining to criminal investigations or prosecutions that have concluded in a final result other than conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). You state, and provide documentation showing, that the cases associated with the submitted information have been closed. Thus, we understand from your representations that the submitted information pertains to criminal investigations that have concluded in final results other than conviction or deferred adjudication. Therefore, we find that section 552.108(a)(2) is applicable to the portions of the submitted information that the department seeks to withhold under that exception to disclosure.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing 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). *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public, including detailed description of offense). Accordingly, with the exception of basic information that must be released from these particular portions of the submitted information, we conclude that the department may withhold these portions pursuant to section 552.108(a)(2) of the Government Code. We note, however, that the department maintains the discretion to release all or part of this particular information that is not otherwise confidential by law. *See* Gov't Code § 552.007.

Finally, you claim that a driver's license number that you highlighted within the submitted information is excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130(a) excepts from disclosure information that relates to: "(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; (2) a motor vehicle title or registration issued by an agency of this state; or (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document." Gov't Code § 552.130(a)(1)-(3). Accordingly, we conclude that the department must withhold this number pursuant to section 552.130 of the Government Code, but only if it is a Texas driver's license number. Otherwise, the department must release it to the requestor.

In summary, the social security number that you highlighted within the submitted information may be confidential under federal law. With the exception of basic information that must be released from the portions of the submitted information that the department seeks to withhold under section 552.108, the department may withhold these particular portions pursuant to section 552.108(a)(2) of the Government Code. The department must withhold the driver's license number that you highlighted within the submitted information pursuant to section 552.130 of the Government Code, but only if it is a Texas driver's license number. The department must release the remaining submitted information 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).

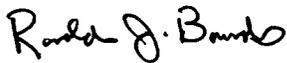
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 192542

Enc. Submitted documents

c: Ms. Ann Strunck
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Waco, Texas 76707
(w/o enclosures)