



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2004

Chief Don Hatcher
City of Leander
P.O. Box 319
Leander, Texas 78646-0319

OR2004-0026

Dear Chief Hatcher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193730.

The Leander Police Department (the "department") received a request for a particular police report. You claim that 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 claim and reviewed the submitted information.

Because your claim regarding section 552.108 is the broadest, we address it first. This section provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (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;

(3) it is information relating to a threat against a peace officer collected or disseminated under Section 411.048; or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An 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 is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. A governmental body that raises section 552.108 must reasonably explain how and why section 552.108 is applicable. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You have not explained how release of the submitted information would interfere with "the detection, investigation, or prosecution of crime" or with "law enforcement or prosecution" in general. Thus, you have not shown that subsection (a)(1) or (b)(1) applies. You do not

inform us that the incident at issue concluded in a result other than conviction or deferred adjudication. Therefore subsections (a)(2) and (b)(2) do not apply. You do not assert, nor does the submitted information indicate, that the records at issue constitute information relating to a threat against a peace officer collected or disseminated under section 411.048. Therefore section 552.108(a)(3) does not apply. Finally, you do not represent that the information at issue was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that it reflects the mental impressions or legal reasoning of an attorney representing the state. Therefore, subsections 552.108(a)(4) and (b)(3) do not apply. Because you have failed to explain how and why section 552.108 is applicable, none of the submitted information may be withheld pursuant to this exception. *See Gov't Code § 552.301(e)(1)(A); Ex parte Pruitt, 551S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).*

You also note that the submitted information contains social security numbers. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses amendments to the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), that 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).* We have no basis for concluding that any social security number at issue is confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that such information is not obtained or maintained pursuant to any provision of law enacted on or after October 1, 1990. In any event, we note that the laws making social security numbers confidential are based on privacy concerns. Therefore, the requestor has a special right of access to his own social security number. *See Gov't Code § 552.023(b)* (information may not be withheld from person who is subject of information solely on basis that information is excepted from disclosure to protect the subject's privacy).

In addition, you note that the submitted information includes Texas-issued driver's license numbers. Section 552.130 of the Government Code requires the department to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Consequently, pursuant to section 552.130, the department must redact the Texas-issued driver's license information we have marked. We note, however, that section 552.130 is based on privacy concerns. Therefore, the requestor has a special right of access to his own driver's license information. *See Gov't Code § 552.023(b).*

In summary, social security numbers of individuals other than the requestor may be confidential under federal law. We have marked Texas-issued motor vehicle record

information that must be withheld under section 552.130. The remaining submitted information must be released.

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).

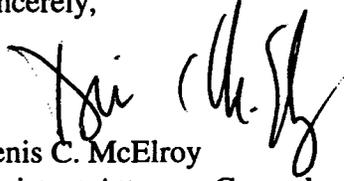
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 193730

Enc. Submitted documents

c: Mr. Daniel E. Smith
2702 S. Bagdad Apt # 525
Leander, Texas 78641
(w/o enclosures)