ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2004

Ms. Lisa M. Salinas
Custodian of Records
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2004-0774

Dear Ms. Salinas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 195552.

The Baytown Police Department (the "department") received a request for information relating to a specified case number. You claim that some of the requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.[1]

Section 552.108(a)(1) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" 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 inform us that the submitted information relates to a pending criminal investigation. You state that the release of the orange-highlighted portions of this information would interfere with the investigation. Based on

[1]We note that you have redacted some of the information that the department seeks to withhold. This office cannot review redacted information. In the future, you must submit the information at issue in a manner that enables this office to determine whether the information is excepted from disclosure. *See* Gov't Code §§ 552.301(e)(1)-(2), .302.

your representations and our review of the submitted information, we conclude that you may withhold the orange-highlighted information under section 552.108(a)(1). *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).[2]

We next note that a small amount of the remaining information may be confidential under section 552.101 of the Government Code.[3] Section 552.101 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 a governmental body obtained or maintains the social security number under any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security number contained in the remaining information is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that requires or authorizes the department to obtain or maintain a social security number. Thus, we have no basis for concluding that the social security number at issue was obtained or is maintained under 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 we have marked, 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.

You also raise section 552.130 of the Government Code. This section excepts from public disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). We agree that the Texas driver's license numbers that you have highlighted in pink must be withheld under section 552.130.

In summary: (1) the department may withhold the orange-highlighted information under section 552.108(a)(1) of the Government Code; (2) the department may be required to withhold the marked social security number under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code; and (3) the department

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[2]As section 552.108(a)(1) encompasses all of the information that you seek to withhold under section 552.108, we need not address your claim under section 552.108(b)(1).

[3]Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because chapter 552 of the Government Code prescribes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).

must withhold the pink-highlighted Texas driver's license information under section 552.130. The rest of the 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).

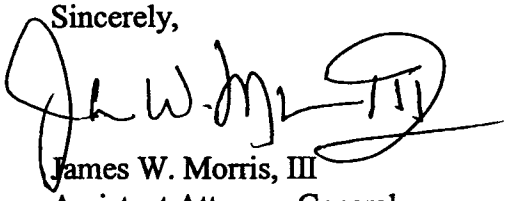
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



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

JWM/sdk

Ref: ID# 195552

Enc: Submitted documents

c: Ms. Carol Mahoney
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Houston, Texas 77049
(w/o enclosures)