



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 18, 2004

Mr. Leonard V. Schneider
Ross, Banks, May, Cron & Cavin
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2004-1187

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 196350.

The City of League City (the "city"), which you represent, received a request for a specified police report. You indicate that you will release some of the responsive information. However, 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 claim and reviewed the submitted information.

We first address your argument that a portion of the requested information is excepted from disclosure by section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See Gov't Code* §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that pages 000007 through 000009 of the submitted information and the portions of page 000006 that you have marked relate to an ongoing criminal investigation. Based upon this representation, we conclude that the release of the information would interfere with the detection, investigation, or prosecution of crime. *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). Thus, section 552.108 is applicable to this information.

We note, however, that basic information normally found on the front page of an offense report is generally considered public. See generally Gov't Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d 177; Open Records Decision No. 127 (1976). Thus, the city must release the types of information that are considered to be basic front page offense report information, including a detailed description of the offense, even if this information is not actually located on the front page of the offense report. Although section 552.108(a)(1) authorizes the city to withhold pages 000007 through 000009 and the marked portions of page 000006 from disclosure, the city may choose to release all or part of the information at issue that is not otherwise confidential by law. See Gov't Code § 552.007.

We note, however, that a small amount of basic front page information may be confidential under section 552.101 of the Government Code.¹ 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 information at issue 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 city 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 city should ensure that it was not obtained and is not maintained under any provision of law enacted on or after October 1, 1990.

We now turn to your arguments with respect to the remainder of the submitted information. You have marked certain information on pages 000001 through 000005 that you argue is excepted from disclosure by section 552.130 of the Government Code. Section 552.130 provides in relevant part:

¹Unlike 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).

(a) Information is excepted from the requirement of Section 552.021 if the information 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; or
- (3) a personal identification document issued by an agency of this state of a local agency authorized to issue an identification document

The city must withhold the driver's license, license plate, and vehicle identification numbers that you have marked under section 552.130.

In summary, with the exception of basic information, the city may withhold pages 000007 through 000009 and the portions of page 000006 that you seek to withhold under section 552.108(a)(1). The social security number that we have marked may be confidential under federal law. The city must withhold the driver's license, license plate, and vehicle identification numbers that you have marked under section 552.130. The remaining submitted information must be released 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 196350
Enc. Submitted documents

c: Mr. Larry Cook
2009 Catamaran
League City, Texas 77573
(w/o enclosures)