



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 16, 2004

Ms. Kimberley Mickelson
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019

OR2004-3088

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199898.

The City of Seabrook (the "city"), which you represent, received a request for any records regarding a named individual. You state that the city released some of the responsive information to the requestor. However, you claim that a portion 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 claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201 of the Family Code reads in part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We conclude that Exhibit A3 consists of reports, records, or working papers used or developed in an investigation made under chapter 261 of the Family Code. You state that the Seabrook Police Department has no regulations that would allow for the release of this type of information. Therefore, Exhibit A3 is confidential pursuant to section 261.201 of the Family Code. See Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, the city must withhold Exhibit A3 in its entirety under section 552.101 of the Government Code.¹

In regard to the remaining submitted information, section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, we agree that the remaining submitted information pertains to investigations that concluded in results other than conviction or deferred adjudication. Therefore, section 552.108(a)(2) is applicable to this information.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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) (listing basic information that must be released from offense report in accordance with *Houston Chronicle*). We note that basic information includes a detailed description of the offense and the social security numbers of arrestees, but not the driver's license numbers of arrestees.² ORD127. Thus, with the exception of the basic offense and arrest information, the city may withhold the remaining submitted information from disclosure based on section 552.108. We note that you have the discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

Although not excepted from disclosure under section 552.108, an arrestee's social security number may be confidential under federal law. Section 552.101 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

¹We note, however, that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, the child's parent(s) may have the statutory right to review that file. See Fam. Code § 261.201(g); Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Sess. Law Serv. 611, 641 ("A reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.").

²We further note that basic information as described in *Houston Chronicle* does not include any motor vehicle information covered by section 552.130 of the Government Code.

October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that the 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 by the city pursuant to any provision of law enacted on or after October 1, 1990.

In summary, we conclude that: 1) the city must withhold Exhibit A3 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; 2) with the exception of the basic offense and arrest information, the city may withhold the remaining submitted information based on section 552.108 of the Government Code; and 3) the arrestee's social security number may be confidential under federal law. As our ruling is dispositive, we need not address your remaining argument.

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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 199898

Enc: Submitted documents

c: Anne B. Darring
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(w/o enclosures)