



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 15, 2004

Ms. Maleshia B. Farmer  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2004-4853

Dear Ms. Farmer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203424.

The City of Fort Worth (the "city") received a request for police reports for victims that qualify under the Crime Victims' Compensation Program for certain crimes over a specified time period. You state that the city will provide the requestor with some of the requested information. However, you claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.132 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Section 552.108(a) of the Government Code 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 the information in Exhibit C relates to pending criminal investigations and prosecutions. Based upon this representation, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle*

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<sup>1</sup>Because the requestor seeks reports over a specified time period, any submitted reports outside that time period are not responsive to the request for information, and we need not address that applicability of the Public Information Act ("Act") to them.

*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).

However, section 552.108 does not except 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*. See Open Records Decision No. 127 (1976) (listing basic information that must be released from offense report in accordance with *Houston Chronicle*). Thus, with the exception of the basic offense and arrest information, the city may withhold Exhibit C 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.

Next, you assert that the victims' identifying information in Exhibit D is subject to section 552.132 of the Government Code. Section 552.132(b) affords crime victims three years from the date of filing an application for compensation to submit an election for disclosure or non-disclosure of certain crime victim information held by the Crime Victim's Compensation Division of the Office of the Attorney General. See Gov't Code § 552.132(b). Additionally, section 552.132(f) permits an employee of a governmental body who is also a crime victim to elect whether to allow public access to information held by the Office of the Attorney General or other governmental body that would identify or tend to identify the crime victim. If the employee fails to make an election, the identifying information is excepted from disclosure until the third anniversary of the date the crime was committed. See Gov't Code § 552.132(f). In this instance, however, you have failed to demonstrate the applicability of section 552.132 of the Government Code to the submitted information.<sup>2</sup> Consequently, the victims' identifying information in Exhibit D may not be withheld on this basis.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

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<sup>2</sup>Per our discussion on June 15, 2004, you state that the city has been unable to determine if any of the crime victims made a section 552.132 election, and it is your understanding that none of the crime victims are government employees.

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

The information in Exhibit E involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, this information is confidential pursuant to section 58.007(c) of the Family Code, and it must be withheld from disclosure under section 552.101 of the Government Code.

In regard to the remaining submitted information, section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we conclude that none of the remaining information is protected by common-law privacy, and it may not be withheld on this basis.

Next, we note that social security numbers must be withheld in some circumstances under 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). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and 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 id.* We have no basis for concluding that the social security numbers in the responsive information are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the city should ensure that no such information was obtained or is maintained by it pursuant to any provision of law enacted on or after October 1, 1990.

Finally, section 552.130 of the Government Code prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this

state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, we agree that the city must withhold the section 552.130 information you have highlighted, as well as the additional information we have marked.

In summary, we conclude that: 1) with the exception of the basic offense and arrest information, the city may withhold Exhibit C based on section 552.108 of the Government Code; 2) Exhibit E must be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code; 3) social security numbers may be confidential under federal law; and 4) the city must withhold the section 552.130 information. All remaining 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,

  
W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/krl

Ref: ID# 203424

Enc: Submitted documents

c: Dr. Philip Rodriguez  
Rodriguez Chiropractic Clinic  
2821 E. Lancaster  
Fort Worth, Texas 76103  
(w/o enclosures)