



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

June 22, 2004

Ms. Patricia J. Acosta  
Assistant District Attorney  
Office of the District Attorney, 34<sup>th</sup> Judicial District  
500 East San Antonio Street, 2<sup>nd</sup> Floor  
El Paso, Texas 79901-2420

OR2004-5068

Dear Ms. Acosta:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203878.

The Office of the District Attorney, 34<sup>th</sup> Judicial District (the "district attorney") received a request for specified offense reports. You state that the district attorney has provided the requestor with some of the requested information. You claim, however, that the remaining requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that the submitted information at issue is subject to section 552.022 of the Government Code. Section 552.022 provides that:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

Gov't Code § 552.022(a)(1). The submitted information at issue constitutes information from a completed investigation made of, for, or by the district attorney that is subject to section 552.022(a)(1). Thus, the district attorney must release the submitted information at

issue to the requestor, unless it is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Although the district attorney claims that portions of the submitted information at issue are excepted from disclosure pursuant to section 552.103 of the Government Code, we note that section 552.103 is a discretionary exception to disclosure under the Public Information Act (the "Act") that does not constitute "other law" for the purposes of section 552.022.<sup>1</sup> Accordingly, we conclude that the district attorney may not withhold any portion of the submitted information at issue under section 552.103 of the Government Code. However, since the district attorney also claims that portions of the submitted information at issue are excepted from disclosure pursuant to section 552.108(a)(1) of the Government Code, we will address this claim.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime[.]

Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

Although you acknowledge that the case associated with the submitted information at issue resulted in a conviction of the suspect involved in the matter, you contend that the identifying information of "the decedent, the complaining witness, and the decedent's mother" contained within the submitted information at issue is excepted from disclosure under section 552.108(a)(1). You indicate that the release of this particular information could subject the individuals at issue to possible intimidation or harassment or harm the prospects for future cooperation between witnesses and law enforcement officers. You state that this particular information should be withheld as the district attorney fears any gang retaliation. We note that this office has found that the identities of complainants and witnesses may be

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<sup>1</sup> Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.,* Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 522 at 4 (1989) (discretionary exceptions in general), 473 (1987) (governmental body may waive statutory predecessor to section 552.111); *see also Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.-Dallas 1999, no pet.) (governmental body may waive section 552.103). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

withheld from disclosure under section 552.108 in some limited circumstances. *See* Open Records Decision Nos. 366 (1983), 333 at 2 (1982), 297 (1981); *cf.* Open Records Decision Nos. 393 (1983) (identifying information concerning victims of sexual assault), 339 (1982), 169 at 6-7 (1977), 123 (1976). Based on your representations and our review of this particular information, we find in this instance that you have adequately demonstrated the applicability of section 552.108 to this information. Accordingly, we conclude that the district attorney may withhold this particular information under section 552.108 of the Government Code.

We note that the submitted information at issue contains social security numbers, which we have marked, that may be excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I).<sup>2</sup> These amendments 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). The district attorney has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain social security numbers. Thus, we have no basis for concluding that these social security numbers are confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution the district attorney, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing these social security numbers, the district attorney should ensure that they were not obtained and are not maintained by the district attorney pursuant to any provision of law enacted on or after October 1, 1990.

Finally, we note that portions of the remaining submitted information at issue are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to: "(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; (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 or a local agency authorized to issue an identification document." Gov't Code § 552.130(a)(1)-(3). Accordingly, we conclude that the district attorney must withhold the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code.

In summary, the district attorney may withhold the identifying information of "the decedent, the complaining witness, and the decedent's mother" that you have marked pursuant to section 552.108 of the Government Code. Social security numbers that we have marked within the submitted information at issue may be confidential under federal law. The district

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<sup>2</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

attorney must withhold the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code. The district attorney must release the remaining submitted information at issue 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/krl

Ref: ID# 203878

Enc. Marked documents

c: Mr. Walter M. Reaves, Jr.  
Law Offices of Walter M. Reaves, Jr.  
P. O. Box 55  
Waco, Texas 76691  
(w/o enclosures)