ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 23, 2004

Mr. G. Chadwick Weaver
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2004-5120

Dear Mr. Weaver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203934.

The Midland Police Department (the "department") received a request for a specified police report. You state that the department has released most of the requested information. You claim that the remaining information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. 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 pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). You claim that the social security number contained in the submitted police report falls under the federal Social Security Act because it was obtained pursuant to section 411.086 of the Government Code. Section 411.086 contemplates rules that the Department of Public Safety (the "DPS") shall adopt in regard to requests for criminal history information. Section 411.086(b)(2) states that such rules "may require a person requesting criminal history information about an individual to submit to [DPS] one or more of the following: . . . (E) any known identifying number of the individual, including social security

number . . . ." Gov't Code § 411.086(b)(2). While you state that "[t]he collection of Social Security numbers by police officers helps establish identities of criminals," you do not specifically state whether the department obtained or maintains the social security number at issue here in order to request criminal history information from the DPS. Moreover, you do not inform us whether the DPS actually requires or required the department to submit the social security number at issue in order to request criminal history information. Nevertheless, we conclude that if the department obtained or maintains the submitted social security number in order to request criminal history information from the DPS, and if the DPS actually requires or required the department to submit this social security number with a request for criminal history information, then the social security number at issue is confidential under federal law in conjunction with section 411.086 of the Government Code and must be withheld from disclosure under section 552.101 of the Government Code.

Section 552.130 excepts from public disclosure information that 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[.]

Gov't Code § 552.130(a)(1)-(2). We have marked Texas driver's license and motor vehicle title or registration information that the department must withhold under section 552.130.

In summary: (1) the department must withhold the submitted 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 section 411.086 of the Government Code if the department obtained or maintains this social security number in order to request criminal history information from the DPS and if the DPS actually requires or required the department to submit this social security number with a request for criminal history information; and (2) the department must withhold the marked Texas driver's license and motor vehicle title or registration information under section 552.130.

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).

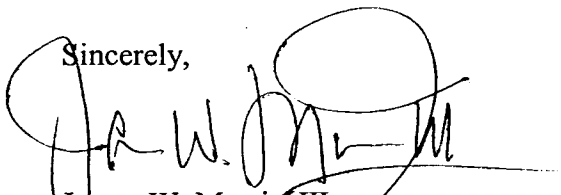
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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# 203934

Enc: Submitted documents

c: Mr. Leonard N. Wood, Jr.
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(w/o enclosures)