



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2004

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2004-6799

Dear Mr. Mann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206977.

The Garland Police Department (the "department") received a request for all offense reports filed by a named individual during a certain period and the offense report, including the videotape, pertaining to the arrest of another individual. You state you have released some of the requested information, but claim that the remaining 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 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108(a)(1) 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), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that reports #2004R011988, #2004R010599, and #2004R010594, as well as the submitted videotape, relate to pending criminal investigations. We therefore believe that release of the yellow-highlighted information in these reports and the videotape "would interfere with the detection, investigation, or prosecution of crime." *See* Gov't Code 552.108(a)(1). Thus, you may withhold this information and videotape under section 552.108(a)(1).

Section 552.108(a)(2) 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 understand you to assert that report # 2003R034724 pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that you may withhold the yellow-highlighted information in this report under section 552.108(a)(2). We note that you have the discretion to release all or part of the information protected by section 552.108 that is not otherwise confidential by law. Gov't Code § 552.007.

Next, the department asserts section 552.101 excepts the orange-highlighted information from public disclosure. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the common law right to privacy, which protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and the public has no legitimate interest in it. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). However, information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common law privacy and *Reporters Committee*. Cf. Gov't Code § 411.082(2)(B).

The current offenses charged in the submitted information are not subject to the restrictions placed on criminal history information. See *id.* § 411.081(b) ("This subchapter does not prohibit a criminal justice agency from disclosing to the public criminal history record information that is related to the offense for which a person is involved in the criminal justice system."). Accordingly, we conclude the information that you have highlighted in orange may not be withheld from the requestor under section 552.101 of the Government Code on the basis that it constitutes criminal history information.

The submitted information contains a social security number. Section 552.101 encompasses information protected by other statutes. A social security number may be excepted from disclosure under section 552.101 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.* In this case, we have no basis for concluding that any of the social security numbers in the reports are 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 Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, the department asserts the Texas driver's license number highlighted in green is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a Texas driver's license. Thus, the department must withhold the Texas driver's license number highlighted in green under section 552.130.

To conclude, (1) the yellow-highlighted information and videotape are excepted under section 552.108, (2) the social security number may be confidential under federal law, and (3) the green-highlighted information is excepted under section 552.130. The 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).

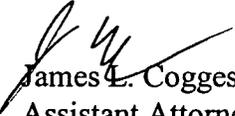
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 206977

Enc. Submitted documents

c: Mr. Ricky Hutcherson
305 West Dallas
Hutchins, Texas 75141
(w/o enclosures)