



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2004

Ms. Denise Obinegbo
Open Records Specialist
Richardson Police Department
P. O. Box 831078
Richardson, Texas 75083-1078

OR2004-7156

Dear Ms. Obinegbo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 207643.

The Richardson Police Department (the "department") received a request for certain information pertaining to a specified business entity and a certain period of time. You state, and provide documentation showing, that the department has provided the requestor with some of the requested information. You claim that the remaining requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we must address the procedural requirements of section 552.301 of the Government Code. Section 552.301(a) requires that a governmental body request a ruling from this office when it receives a written request for information that it wishes to withhold and for which there has not been a previous determination. Pursuant to section 552.301(e), the governmental body must submit the following information to this office within fifteen business days of its receipt of the request: (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Gov't Code § 552.301(a), (e).*

You indicate that the information that you submitted to us for review as Exhibit B was released to the requestor with certain information redacted from the documents. We note,

however, that the department does not assert that this redacted information is excepted from disclosure under the Public Information Act (the "Act"). Further, we note that the department does not inform us that the redacted information is subject to a previous ruling from this office. In addition, you do not assert, nor has our review of our records indicated, that you have been granted a previous determination to withhold this redacted information from the requestor without seeking a ruling from this office. *See* Gov't Code § 552.301(a); *see also* Open Records Decision No. 673 (2001) (delineating elements of attorney general decisions that constitute previous determinations for purposes of Gov't Code § 552.301(a)). Because this redacted information is not subject to either of the types of previous determinations, we find that the department has failed to comply with the procedural requirements of section 552.301 with respect to this information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301(e) results in the legal presumption that the information at issue is public and must be released. Information that is presumed public must be released, unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists when some other source of law makes the information confidential or third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because in this instance we are able to ascertain that some of this redacted information may be confidential by law, we will address this particular redacted information, as well as the remaining submitted information. However, we conclude that the department must release the remaining redacted information to the requestor. *See* Gov't Code §§ 552.006, .221, .301, .302; *see also* Open Records Decision No. 664 (2000).

You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) protects records pertaining to criminal investigations or prosecutions that have concluded in a final result other than conviction or a deferred adjudication. *See* Gov't Code § 552.108(a)(2). You indicate that these particular portions of the submitted information pertain to criminal investigations or prosecutions that concluded in final results other than conviction or deferred adjudication because the cases were either "exceptionally cleared," "closed," "inactivated," or "cleared as unfounded." Based on your representations and our review of these particular portions of the submitted information, we agree that section 552.108(a)(2) applies to this information. We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* 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) (summarizing types of basic information that must be made available to public, to include detailed description of offense).

Generally, the identity of a complainant must be released as basic information. However, information tending to identify an alleged victim of sexual assault is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.¹ *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Accordingly, we conclude that the department must withhold the types of basic information that we have marked in incident report number 01-008670 pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. However, the department must release to the requestor the remaining basic information that is contained in the information that the department seeks to withhold under section 552.108(a)(2). The department may withhold the remaining submitted information for which it claims section 552.108(a)(2) of the Government Code pursuant to that exception to disclosure. We note that the department maintains the discretion to release all or part of that particular information to the extent that such information is not otherwise confidential by law. *See* Gov't Code § 552.007.

Next, we note that social security numbers that are contained within the remaining submitted information may be excepted from disclosure pursuant to section 552.101 in conjunction with federal law. Section 552.101 also encompasses information that is protected from disclosure by other statutes. *See* Gov't Code § 552.101. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that were obtained or are 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 department 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. Therefore, 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 department, 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 department should ensure that they were not obtained and are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In addition, we note that portions of the remaining submitted information are subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure 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 conclude that the department must withhold motor vehicle information contained within the remaining submitted information pursuant to section 552.130 of the Government Code, but only to the extent that it constitutes Texas motor vehicle information. We have marked a representative sample of the types of information that are subject to this exception to disclosure.

¹ 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 the common-law right to privacy.

Finally, we note that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.136 of the Government Code. Section 552.136 provides that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. Based on our review of the submitted information, we find that the insurance policy numbers that we have marked are encompassed by section 552.136. Accordingly, we conclude that the department must withhold these marked account numbers pursuant to section 552.136 of the Government Code.

In summary, the department must withhold the types of basic information that we have marked in incident report number 01-008670 pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. With the exception of the remaining basic information that is contained in the information that the department seeks to withhold under section 552.108(a)(2) that must be released, the department may withhold the information for which it claims section 552.108(a)(2) pursuant to that exception to disclosure. Social security numbers contained within the rest of the submitted information may be confidential under federal law. The department must withhold motor vehicle information contained within the rest of the submitted information pursuant to section 552.130 of the Government Code, but only to the extent that it constitutes Texas motor vehicle information. The department must withhold the account numbers that we have marked pursuant to section 552.136 of the Government Code. The department must release to the requestor the remaining submitted information to the extent that it has not already done so.

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)

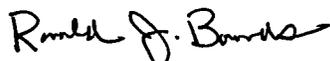
notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things 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# 207643

Enc. Marked documents

c: Mr. Mike Johanson
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(w/o enclosures)