



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 2, 2004

Ms. Terri Isenberg  
Records Division  
Rosenberg Police Department  
2120 Fourth Street  
Rosenberg, Texas 77471

OR2004-7510

Dear Ms. Isenberg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208271.

The Rosenberg Police Department (the "department") received a request for information pertaining to case number 1997-25114. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 submitted information relates to "an open and active investigation." We note, however, that the statute of limitations for the offense listed in the report has expired. *See* Penal Code § 31.03(e)(4)(A) (theft of property valued \$1500 or more but less than \$20,000 is felony offense), Code of Criminal Procedure art. 12.01(4)(A) (felony indictment for this category of theft may be presented within five years from date of commission of offense, and not afterward). You do not explain how the submitted information pertains to a pending case.

We find you have failed to reasonably explain how release of the submitted information would interfere with law enforcement. We therefore determine the department may not withhold the information at issue pursuant to section 552.108 of the Government Code.

We note the submitted documents include Texas driver's license numbers that are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. The department must withhold the Texas driver's license numbers we have marked under section 552.130 of the Government Code.<sup>1</sup>

The submitted documents also contain social security numbers that may be excepted under section 552.101 of the Government Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. *See* Open Records Decision No. 622 (1994). 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 id.* We have no basis for concluding that the social security numbers at issue 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 Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the department 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.<sup>2</sup>

In summary, the department must withhold the Texas driver's license numbers we have marked under section 552.130 of the Government Code. Social security numbers may be excepted under section 552.101 of the Government Code in conjunction with federal law. The remainder of the submitted information must be released to the requestor.

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<sup>1</sup> We note, however, that the requestor has a right of access to her own Texas driver's license number. *See* Gov't Code § 552.023 (person's authorized representative has special right of access to information that is excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information).

<sup>2</sup> The requestor has a right of access to her own social security number. Gov't Code § 552.023.

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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Saldivar', with a long horizontal flourish extending to the right.

David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 208271

Enc: Submitted documents

c: Ms. Della M. Metz  
2117 Ripple Creek Drive  
Rosenberg, Texas 77471  
(w/o enclosures)