



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2004

Ms. Theresa A. Lamensky
Records Division
City of Rosenberg
2120 Fourth Street
Rosenberg, Texas 77471

OR2004-8686

Dear Ms. Lamensky:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 210911.

The Rosenberg Police Department (the "department") received a request for the report pertaining to case number 2000-28824. You state that some of the requested information has been released, but claim that some of the submitted 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) 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 case number 2000-28824 is an open and active investigation. We note, however, that this report involves an allegation of assault that occurred on October 3, 2000. The longest possible statute of limitations for the offense described in this report is three years. *See* Crim. Proc. Code art. 12.01(6) (providing limitation period of three years for any felony offense not listed in subsections one through five). More than three years elapsed between October 3, 2000, and the date you received this request for information, August 5, 2004. You have neither informed this office that any criminal charges were filed within the limitations period nor have you otherwise explained how release of this

information will interfere with the detection, investigation, or prosecution of crime. Thus, because you have not shown the applicability of section 552.108(a)(1), we conclude that you may not withhold the submitted information on this basis.

We note, however, that the submitted information includes social security numbers. A social security number or "related record" 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).¹ 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.* We have no basis for concluding that any of the social security numbers in the file 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. We note that the laws making social security numbers confidential are based on privacy concerns. Therefore, the requestor has a special right of access to her own social security number. *See* Gov't Code § 552.023(b) (information may not be withheld from person who is subject of information solely on basis that information is excepted from disclosure to protect the subject's privacy).

Lastly, some of the requested information is confidential under section 552.130 of the Government Code, which provides, in relevant part:

- (a) Information is excepted from the requirement of Section 552.021 if the information 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 of a local agency authorized to issue an identification document.

¹ The Office of the Attorney General will raise mandatory exceptions like sections 552.101 and 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Therefore, Texas driver's license numbers and state identification numbers would normally be excepted from disclosure pursuant to section 552.130. We note, however, that the submitted information contains the requestor's driver's license number and state identification number. Section 552.130 is designed to protect the privacy interest of the individual to whom the information relates. Therefore, you must release the requestor's driver's license number and state identification number pursuant to section 552.023.² However, you must withhold the marked information under section 552.130 that does not pertain to the requestor.

In summary, the department must withhold the marked information under section 552.130, social security numbers other than the requestor's may be excepted under section 552.101 in conjunction with federal law, and the department must release all remaining information 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,

² We emphasize that if the department receives a future request for this information from an individual other than the requestor or the requestor's authorized representative, the department should again seek our decision.

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,


Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/krl

Ref: ID# 210911

Enc. Submitted documents

c: Mary Jackson
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Sealy, Texas 77474
(w/o enclosures)