



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 19, 2004

Chief Don Hatcher  
Leander Police Department  
P.O. Box 319  
Leander, Texas 78646-0319

OR2004-8893

Dear Chief Hatcher:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 211259.

The Leander Police Department (the "department") received a request for information relating to a specified call-for-service number. You claim that some of the requested 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 have reviewed the information you submitted.<sup>1</sup>

We first note that Attachment C includes an accident report that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for the release of an accident report to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See* Act of May 25, 2001, 77<sup>th</sup> Leg., R.S., ch. 1032, § 5, 2001 Tex. Gen. Laws 2281, 2282. Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency

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<sup>1</sup>We note that the department has redacted some of the submitted information. As we are able in this instance to discern the nature of the redacted information, we will determine whether it is excepted from public disclosure. In the future, the department should refrain from redacting any information that it submits to this office in seeking an open records ruling. *See* Gov't Code §§ 552.301(e)(1)(D), .302.

with two or more of the three items of information specified by section 550.065(c)(4). *Id.* In this instance, the requestor has not provided two of the three items of information specified by section 550.065(c)(4). Therefore, the department must withhold the accident report that we have marked under section 550.065 of the Transportation Code.

The department seeks to withhold the rest of the information in Attachment C under section 552.108. This section excepts from public 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[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You indicate that release of the remaining information in Attachment C could interfere with a pending case. Based on your representation and our review of the information at issue, we find that section 552.108(a)(1) is applicable in this instance. *See Houston Chronicle Publ’g Co. 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) (court delineates law enforcement interests that are present in active cases). We therefore conclude that the department may withhold the remaining information in Attachment C under section 552.108(a)(1).

We next note that the department may be required to withhold the social security number in Attachment B under section 552.101.<sup>2</sup> This section excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses information that is made confidential by statute. A social security number is confidential under the 1990 amendments to the federal Social Security Act if it was obtained or is maintained by a governmental body under any provision of law enacted on or after October 1, 1990. *See* 42 U.S.C. § 405(c)(2)(C)(viii)(I); Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security number in Attachment B is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that requires or authorizes the department to obtain or maintain a social security number. Thus, we have no basis for concluding that the social security number in question was obtained or is maintained under such a law and is therefore confidential under the federal law. We caution you, however, that the Act imposes criminal penalties for the release of confidential information. *See* Gov’t Code §§ 552.007, .352. Therefore, before releasing this social security number, the department should ensure that it was not obtained

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<sup>2</sup>We also note that this social security number is that of an arrested person. An arrestee’s social security number is basic information under section 552.108(c) and thus may not be withheld under section 552.108(a)(1). *See* Gov’t Code § 552.108(c); *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public under *Houston Chronicle*).

and is not maintained by the department under any provision of law enacted on or after October 1, 1990.

Attachment B also contains Texas driver's license and motor vehicle information that is excepted from public disclosure under section 552.130. This section encompasses 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 the information in Attachment B that must be withheld from the public under section 552.130. We note, however, that some of the marked information relates to the requestor's vehicles. The requestor has a special right of access to his own vehicle information under section 552.023.<sup>3</sup> Motor vehicle information to which the requestor has a right of access under section 552.023 may not be withheld from him under section 552.130, as this exception protects privacy interests.

In summary: (1) the department must withhold the peace officer's accident report under section 550.065 of the Transportation Code; (2) the department may withhold the rest of the information in Attachment C under section 552.108(a)(1); (3) the department may be required to withhold the social security number in Attachment B under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code; and (4) the Texas driver's license and motor vehicle information in Attachment B must be withheld from the public under section 552.130, but the requestor has a right of access to his own motor vehicle information under section 552.023. The rest of the submitted 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

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<sup>3</sup>See Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Should the department receive another request for this same information from a person who would not have a right of access to it, the department should resubmit this same information and request another decision. See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).

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).

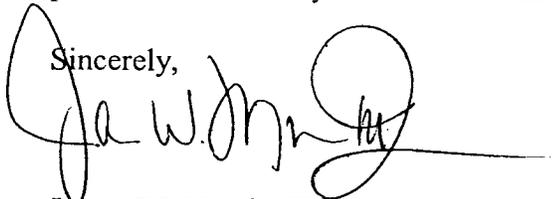
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a long horizontal line extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 211259

Enc: Submitted documents

c: Mr. Bruce Layman  
2004 Foothills  
Leander, Texas 78641  
(w/o enclosures)