



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2004

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

OR2004-10209

Dear Mr. Mann:

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# 212805.

The City of Garland Municipal Court (the "court") and the Garland Police Department (the "department") received separate requests from the same requestor for arrest and search warrants, affidavits for the warrants, and police reports relating to a specified arrest. You inform us that some of the requested information has been released. You 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 have reviewed the information you submitted. We also have considered the comments that we received from the requestor.¹

Initially, we address the request for information that the court received. The Act generally requires the disclosure of information maintained by a "governmental body." *See* Gov't Code § 552.021. Although the Act's definition of a "governmental body" is broad, it specifically excludes "the judiciary." *See id.* § 552.003(1)(A)-(B). In this instance, the request is addressed to the "City of Garland Municipal Courts." Because this request is addressed to the judiciary, which is not a "governmental body" for purposes of the Act, the information encompassed by the request need not be released. Consequently, we do not

¹*See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

address your arguments with regard to that information. We note, however, that as records of the judiciary, the information in question may be public under sources of law other than the Act. *See Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released); Attorney General Opinions DM-166 at 2-3 (1992) (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974).

Next, we address the information that the department seeks to withhold 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 state that the incident report information that you have marked in yellow relates to an ongoing criminal investigation. Based on your representation, we find that the release of the marked information would interfere with the detection, investigation, or prosecution of crime. *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 marked information under section 552.108(a)(1).

You also raise section 552.130. This section excepts from public disclosure information that relates to “a motor vehicle operator’s or driver’s license or permit issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1). The Texas driver’s license number in the submitted arrest report that you have marked in green must be withheld under section 552.130.

The arrest report also contains a social security number that the department may be required to withhold under section 552.101. This section excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. A social security number is confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act if it was obtained or is maintained by a governmental entity 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 question here 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 this social security number 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, you should ensure that it was not obtained and is not maintained by the department under any provision of law enacted on or after October 1, 1990.

In summary: (1) the information encompassed by the request that the court received need not be released; (2) the department may withhold the incident report information marked in yellow under section 552.108(a)(1); (3) the department must withhold the Texas driver's license number in the arrest report under section 552.130; and (4) the department may be required to withhold the social security number in the arrest report under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code.

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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a large, stylized flourish extending to the right.

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

JWM/sdk

Ref: ID# 212805

Enc: Submitted documents

c: Mr. Brian Galindo
International Investigation
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(w/o enclosures)