



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 29, 2004

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

OR2004-10912

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# 215653.

The City of Garland (the "city") and the Garland Police Department (the "department") each received a request for information pertaining to the arrest of a particular individual. You state that you have released some information to the requestors, including basic information about the crime. See Gov't Code § 552.108(c) (stating that basic information about arrested person, arrest, or crime may not be withheld under Gov't Code § 552.108); see also *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); Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). You claim, however, that portions of the submitted information are excepted from disclosure under sections 552.101, 552.103, 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information contains intoxilyzer results. Upon the request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen must be made available to that person or the person's attorney. Transp. Code § 724.018. Thus, you must release the breath test results contained in the submitted information to the attorney for the individual to whom the information pertains.

Section 552.108 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.” Gov’t Code § 552.108(a)(1). 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 advise that the remaining information you have highlighted in yellow, as well as the submitted videotape and photographs, relate to a pending criminal investigation. Based on your representations and having reviewed the information at issue, we conclude that release of the information you have highlighted in yellow, as well as the submitted videotape and photographs, would interfere with the detection, investigation, or prosecution of a crime. Gov’t Code § 552.108(a)(1). *See Houston Chronicle*, 531 S.W.2d 177 (court delineates law enforcement interests that are present in active cases). Therefore, we conclude that you may withhold this information pursuant to section 552.108(a)(1).¹ Although section 552.108(a)(1) authorizes you to withhold this information from disclosure, you may choose to release all or part of this information that is not otherwise confidential by law. *See* Gov’t Code § 552.007.

We note that a small portion of the remaining submitted information may be excepted pursuant to section 552.101, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses common law privacy. Where an individual’s criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual’s right to privacy. *See United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). We have marked information that is generally protected under common law privacy. However, section 552.023(a) of the Government Code affords a person or person’s authorized representative a special right of access to information otherwise protected from public disclosure by laws intended to protect that person’s privacy interests. As one of the requestors in this instance is the individual’s authorized representative, you must release the information we have marked under section 552.101 to this requestor. *See* Gov’t Code §552.023(a) (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).

We also note that the remaining submitted information contains a social security number, which may be withheld in some circumstances under section 552.101 of the Government Code.² 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,

¹ Because we reach this conclusion under section 552.108, we need not address any additional arguments against disclosure for information you have highlighted in yellow.

² Section 552.101 also encompasses information made confidential by other statutes.

42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). 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 this social security number is 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 Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security numbers, you should ensure that no such information was obtained or is maintained by the city or the department pursuant to any provision of law enacted on or after October 1, 1990. We note, however, that the laws making social security numbers confidential are based on privacy concerns. Therefore, the requestor who is the authorized representative of the named individual has a special right of access to the individual's social security number. *See* Gov't Code § 552.023.

Lastly, some of the remaining information is confidential under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from the requirements 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; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, Texas motor vehicle information would normally be excepted from disclosure pursuant to section 552.130. We note, however, that the submitted information contains motor vehicle information that pertains to the client of one of the requestors. Section 552.130 is designed to protect the privacy interest of the individual to whom the information relates. Therefore, the individual's authorized representative is entitled to his client's motor vehicle information. *See* Gov't Code § 552.023. However, you must withhold under section 552.130 the information highlighted in green that does not pertain to the named individual, and you must withhold all information highlighted in green from the other requestor.

In summary, with the exception of the intoxilyzer results which must be released to the requestor who represents the individual who gave the specimen, you may withhold the information highlighted in yellow, as well as the submitted videotape and photographs, under section 552.108(a)(1). The authorized representative of the named individual is entitled to his client's motor vehicle information, social security information, and the information we have marked under section 552.101 and common law privacy. With respect to the other requestor, you must withhold the information we have marked under section 552.101 in

conjunction with common law privacy and all of the motor vehicle information under section 552.130. The submitted social security number may be excepted under section 552.101 in conjunction with federal law. The remaining submitted information not excepted by section 552.108 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 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,



Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/sdk

Ref: ID# 215653

Enc. Submitted documents

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