



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 22, 2005

Ms. Luz E. Sandoval Walker  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9th Floor  
El Paso, Texas 79901

OR2005-01558

Dear Ms. Walker:

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# 219162.

The El Paso Police Department (the "department") received a request for information related to two offense reports, as well as certain department procedures. You state that the requestor has withdrawn her request for a portion of the information and that the department does not maintain other requested information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986) (Act does not require governmental body to disclose information that does not exist at time request is received). You state that other responsive information is being released but claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your argument that information regarding case report 02-330007 is excepted under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information at issue relates to a pending criminal investigation and prosecution. Based upon this representation and our review of the information at issue, we conclude that the release of this 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). Therefore, we agree that section 552.108(a)(1) is applicable to this information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*, including a detailed description of the offense. *See* 531 S.W.2d at 185; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Although section 552.108(a)(1) authorizes the department to withhold the remaining information regarding case number 02-330007 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.

In addition, social security numbers in the submitted information may be confidential under federal law. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information other statutes make confidential. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), 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* Open Records Decision No. 622 (1994). 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 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 department pursuant to any provision of law, enacted on or after October 1, 1990.

You also claim that portions of the submitted information constitute criminal history record information (“CHRI”) that is excepted from disclosure pursuant to section 552.101 in conjunction with chapter 411 of the Government Code. CHRI is defined as “information collected *about a person* by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See* Gov't Code §411.082(2) (emphasis added). The information at issue is not about a person, but is instead information about a certain vehicle

license plate. Therefore, the information does not constitute CHRI and may not be withheld under section 552.101 in conjunction with chapter 411 of the Government Code.

You also argue that a portion of the information in Exhibit B is confidential under section 772.318 of the Health Code and must be withheld under section 552.101. Chapter 772 of the Health and Safety Code makes the originating telephone numbers and addresses of certain 9-1-1 calls confidential. This chapter authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You contend that the originating telephone numbers of 9-1-1 callers that are contained in the submitted call sheets are confidential under chapter 772. To the extent the originating addresses and telephone numbers of 9-1-1 callers were supplied by a 9-1-1 service supplier to a 9-1-1 district that is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code, the addresses and telephone numbers must be withheld from disclosure under section 552.101 of the Government Code as information deemed confidential by statute. However, if the addresses and telephone numbers were not provided by a 9-1-1 service supplier to a 9-1-1 district subject to section 772.118, 772.218, or 772.318, the addresses and telephone numbers may not be withheld on this basis and, as you claim no other exception for them, they must be released.

Finally, you note that the remaining submitted information includes Texas-issued motor vehicle record information. Section 552.130 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; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

By its terms, section 552.130 excepts from disclosure only information pertaining to motor vehicle records issued by this state. It is not clear whether some of the motor vehicle record information at issue pertains to motor vehicle records issued by the State of Texas. Pursuant

to section 552.130, the department must withhold the information we have marked only to the extent that it relates to motor vehicle records issued by the State of Texas.

In summary, the department may withhold all but basic information regarding case 02-330007 under section 552.108 of the Government Code. Social security numbers may be confidential under federal law. The originating addresses and telephone numbers of 9-1-1 callers must be withheld from public disclosure under section 552.101 to the extent they were supplied by a 9-1-1 service supplier to a 9-1-1 district that is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code. To the extent the information that we have marked pertains to Texas-issued motor vehicle records, it must be withheld under section 552.130 of the Government Code. The remaining 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 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 cursive script that reads "L. Joseph James".

L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/seg

Ref: ID# 219162

Enc. Submitted documents

c: Ms. Lorraine Gibbs  
P.O. Box 27254  
El Paso, Texas 79916  
(w/o enclosures)