



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 8, 2005

Ms. Billie F. Smith
Administrative Assistant
City of Huntsville
1220 11th Street
Huntsville, Texas 77340-3991

OR2005-05026

Dear Ms. Smith:

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# 225767.

The Huntsville Police Department (the "department") received a request for information relating to a specified incident involving a named individual, including the incident report and audio and video records. You state that you do not have access to a responsive citation that is maintained in municipal court.¹ You indicate that some of the requested information either has been or will be released. You claim that the rest of the requested information is excepted from disclosure under sections 552.108 and 552.119 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.108 of the Government Code 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction

¹We note that the Act does not require you to release information that did not exist when the department received this request, create responsive information, or obtain information that is not held by or on behalf of the department. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 534 at 2-3 (1989), 518 at 3 (1989), 452 at 3 (1986), 362 at 2 (1983).

or deferred adjudication.[.]” Gov’t Code § 552.108(a)(2). 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). Section 552.108(a)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication. You state, and have provided documentation demonstrating, that the information submitted as Exhibit B-2 relates to a case that was dismissed at the prosecutor’s request. Based on your representations and the submitted documentation, we agree that section 552.108(a)(2) is applicable to Exhibit B-2.

We note that 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-88 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic information under section 552.108(c), even if the information does not literally appear on the front page of an offense or arrest report. The department may withhold the rest of the information in Exhibit B-2 under section 552.108(a)(2).

We also note that although basic information includes the arrested person’s social security number, that information may be confidential under section 552.101 of the Government Code in conjunction with federal law.² The 1990 amendments to the federal Social Security Act make confidential social security numbers and related records that were obtained or are maintained by a state agency or political subdivision of the state 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). We have no basis for concluding that the social security number in question here is confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of the federal law. We caution you, however, that the Act prescribes criminal penalties for the release of confidential information. *See* Gov’t Code §§ 552.007, .352. Prior to releasing any social security number information to the public, the department should ensure that no such information was obtained or is maintained by the department under any provision of law enacted on or after October 1, 1990.

²Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that another statute makes confidential. Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because the Act prescribes criminal penalties for the release of confidential information. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).

Next, we address your claim under section 552.119 of the Government Code. This exception provides as follows:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph exempt from disclosure under Subsection (a) may be made public only if the peace officer or security officer gives written consent to the disclosure.

Gov't Code § 552.119. You believe that the video submitted as Exhibit C depicts a peace officer whose safety is in question. However, having considered your arguments, we conclude that you have not demonstrated that the release of any image of a peace officer contained in Exhibit C would endanger an officer's life or physical safety. We therefore conclude that the department may not withhold any of the information in Exhibit C under section 552.119.

We note, however, that the audio or video portions of Exhibit C may reveal Texas license plate numbers. Section 552.130 of the Government Code excepts from public disclosure information that relates to "a motor vehicle title or registration issued by an agency of this state[.]"³ Gov't Code § 552.130(a)(2). To the extent that Exhibit C reveals Texas license plate numbers, they must be withheld under section 552.130. If the department lacks the capability to redact such information, then Exhibit C must be withheld in its entirety.

In summary: (1) except for the basic information that must be released under section 552.108(c), the department may withhold Exhibit B-2 under section 552.108(a)(2) of the Government Code; (2) the department may be required to withhold the arrested person's social security number under section 552.101 in conjunction with federal law; and (3) any

³This office also will raise 552.130 on behalf of a governmental body, as it is a mandatory exception to disclosure and may not be waived. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

Texas license plate numbers revealed in Exhibit C must be withheld under section 552.130. Unless Exhibit C reveals Texas license plate numbers that the department lacks the capability to redact, the rest of Exhibit C 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).

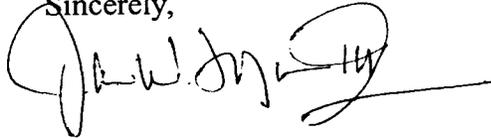
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 long horizontal flourish extending to the right.

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

JWM/sdk

Ref: ID# 225767

Enc: Submitted documents

c: Requestor
c/o Ms. Billie F. Smith
City of Huntsville
1220 11th Street
Huntsville, Texas 77340-3991
(w/o enclosures)