ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2005

Lt. Oscar J. Garcia
Central Records Division
City of McAllen Police Department
P. O. Box 220
McAllen, Texas 78501

OR2005-09344

Dear Lt. Garcia:

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# 237151.

The McAllen Police Department (the "department") received a request for information pertaining to a specified case. You state that some responsive information has been release to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.[1]

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the records at issue pertain to a criminal investigation

[1]We also note that you have redacted some information from the submitted information. A governmental body that submits information to this office for the purpose of requesting an open records ruling must do so in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. As we are able in this instance to ascertain the nature of the information that you have redacted, we will determine whether it is excepted from public disclosure. In the future, however, 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.

that was no-billed by the grand jury. Based on your representations and our review of the submitted information, we find that the submitted information pertains to a case that concluded in a final result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable.

We note, however, that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle Publishing 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). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, you may withhold the submitted information from disclosure pursuant to section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

We note that the submitted information contains the arrestee's social security number. Section 552.147 of the Government Code[2] provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the department must withhold the social security number of the arrestee contained in the submitted information under section 552.147.[3]

In summary, the department, with the exception of the basic front page offense and arrest information, may withhold the submitted offense report under section 552.108(a)(2) of the Government Code. However, the arrestee's social security number must be withheld under section 552.147 of the Government 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

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[2]Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

[3]We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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).

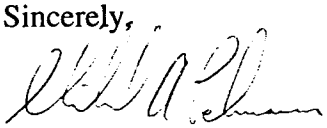
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 Office of the Attorney General 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. 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,



Michael A. Lehmann
Assistant Attorney General
Open Records Division

MAL/krl

Ref: ID# 237151

Enc. Submitted documents

c: Mr. Preston Henrichson
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(w/o enclosures)