



November 17, 2000

Mr. Charles Allen, II
City of Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2000-4442

Dear Mr. Allen:

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# 141315.

The City of Richardson Police Department (the "department") received a request for the following information:

1. A Summary by Location Report for calls from January 1, 1998 to the present for Adams Central Auto Care located at 405 S. Central Expressway.
2. A copy of all reports made for this location, regardless of the type, during this same time period.

You indicate the department has released to the requestor some of the information that is responsive to the request. You have submitted for our review additional responsive information. You claim that this 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.

We note at the outset that, among other information, the department is required to submit to this office "written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld[.]" Gov't Code § 552.301(e)(1)(A). In addition, the department must label the submitted information that is responsive to the request "to indicate which exceptions apply to which parts of the copy." Gov't Code § 552.301(e)(2). If a

governmental body does not request an attorney general decision as provided by section 552.301 of the Government Code, the information requested is "presumed to be subject to required disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302. We additionally note that section 552.108 of the Act, a discretionary exception, does not demonstrate a compelling reason to withhold information from the public and thereby does not overcome the presumption of openness under section 552.302.¹ With reference to the instance request and as more fully explained below, you have not provided this office with sufficient facts, as required by section 552.301(e)(1)(A), for this office to determine whether any of the subsections of section 552.108 applies to any of the information at issue. We accordingly do not believe the department has properly asserted section 552.108 in accordance with the requirements of section 552.301 of the Act.

In relevant part, section 552.108 provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) 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 or deferred adjudication[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

¹Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. See, e.g., Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)); 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding); 549 at 6 (1990) (governmental body may waive informer's privilege); 522 at 4 (1989) (discretionary exceptions in general).

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108(a)(2), (b)(2), (c). Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See also* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). None of the information you have provided clearly informs this office which subsections of section 552.108 you believe are applicable in this instance. You neither assert nor do you argue the applicability of subsections 552.108(a)(1) or (b)(1) to any of the information at issue. We thus have no basis for finding that the release of any of the submitted information at this time would interfere with law enforcement. *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); Open Records Decision No. 216 (1978). We assume from your comments that you intended to assert only the above-quoted subsections 552.108(a)(2) and (b)(2). Your comments state in relevant part that the submitted documents "deal with the detection, investigation or prosecution of crime only in relation to investigations that did not result in conviction or deferred adjudication." You also state, however, that the "documents responsive to this request are the results of a criminal investigation that *has not* resulted in a conviction or deferred adjudication." (Emphasis added). Because subsections 552.108(a)(2) and (b)(2), by their express language, pertain to information that *did not result* in a conviction or deferred adjudication, we believe that these provisions apply only where the matter has reached a *final result* other than conviction or deferred adjudication. Your latter statement implies that a criminal investigation (you do not specify which investigation) has not yet reached a final result. Moreover, in regard to the former representation that investigations (again, you do not specify which investigations) "did not result" in conviction or deferred adjudication, you do not identify the investigations to which you refer, nor do you otherwise inform this office of the disposition of any of the cases or incidents described in the submitted records. In addition, you have not marked any of the documents to indicate which exception, you assert, applies to which parts of the copy. Based on the limited information you have provided, we are thus unable to determine which, if any, of the submitted documents pertain to matters that have concluded in a final result other than conviction or deferred adjudication.

Moreover, we note that even if the department had demonstrated the applicability of section 552.108 to information responsive to the request, we find that much of the submitted information would nevertheless not be excepted under section 552.108. As quoted above,

section 552.108 does not except from required public disclosure "basic information" about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe the term "basic information" as used in section 552.108 refers to the types of information held to be public in *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). Thus, information normally found on the front page of an offense report is generally considered public. Likewise, numerous categories of information found on a police blotter, a show-up sheet, and an arrest sheet also constitute "basic information" that may not be withheld under section 552.108. *See generally Houston Chronicle*, 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 at 3-4 (1976) (summarizing the types of information made public pursuant to *Houston Chronicle*). In summary, the department has not demonstrated that section 552.108 excepts from required public disclosure any of the information at issue.

We note, however, that some of the information must be withheld under sections 552.101 and 552.130 of the Act. These provisions may provide a compelling reason to withhold information sufficient to overcome the section 552.302 presumption of openness. *See, e.g.*, Open Records Decision No. 150 (1977) (information made confidential by law or that affects third party interests may provide compelling reason for withholding under statutory predecessor to section 552.302). Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This provision encompasses information protected by statute, as well as the doctrine of common law privacy.

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, 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.* Although we have marked for possible redaction the information at issue, we have no basis for concluding that any of the social security numbers in the submitted records 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 number information we have marked, 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.

Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable

person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has found that the following types of information may be excepted from required public disclosure under section 552.101 in conjunction with an individual's right to privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). We have marked the information the department must withhold under section 552.101 in conjunction with an individual's right to privacy.²

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[.]

We believe this provision is intended to protect the privacy interests of the third parties whose information is at issue. Therefore, in accordance with this provision, the department must also withhold the Texas driver's license numbers and license plate numbers we have marked.³

In summary, the department has not properly complied with the requirements of section 552.301 of the Act, thus triggering the presumption of openness under section 552.302. In addition, the department has not demonstrated that any of the submitted information is excepted from disclosure under section 552.108. However, pursuant to sections 552.101 and 552.130 of the Act, the department must redact the information we

²We have marked with yellow flags the documents that contain information excepted by section 552.101, and we have marked for redaction the specific information at issue.

³We have marked with yellow flags the documents that contain information excepted by section 552.130, and we have marked for redaction the specific information at issue.

have marked from the yellow-flagged documents. The remaining information must be released to the requestor.

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).

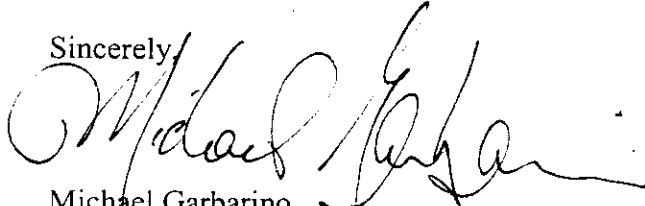
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Department of Public 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 the General Services 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. 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 "Michael Garbarino". The signature is written in a cursive style with a large initial "M".

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 141315

Encl. Submitted documents

cc: Mr. Gil Hernandez
Farmers Insurance Group
P.O. Box 382958
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(w/o enclosures)