



February 5, 1999

Mr. Alberto J. Pena
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR99-0337

Dear Mr. Pena:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 121904.

The City of San Antonio (the "city") received a request for accident reports, incident reports, offense reports and other information related to a certain accident. You indicate that the city will release the requested accident report. You seek to withhold other information responsive to the request under section 552.103(a) of the Government Code. We do not address your section 552.103(a) claim because your request for a decision from this office was not timely.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 of the Government Code to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ).

The copy of the requestor's letter you submitted is date-stamped to indicate that it was received in the city attorney's office on October 27, 1998. Your request for a decision of this office is dated November 12, 1998. Consequently, you have not complied with the statute. Gov't Code 552.301.

When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the

information is made confidential by another source of law or affects third party interests). Your showing that the requested information is subject to the section 552.103(a) exception does not constitute such a compelling demonstration. *See, e.g.* Open Records Decision No. 473 (1987). The requested information therefore may not be withheld under section 552.103(a).

We note however, that the records you submitted as responsive to the request include some information which appears to be confidential by law. Criminal history information is exempt from public disclosure pursuant to section 552.101 of the Government Code, which requires withholding, *inter alia*, information made confidential by statute. Title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history record information ("CHRI") which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Other entities specified in Chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Therefore, you must redact CHRI from the responsive materials before releasing them. *But see*, Gov't Code § 411.082(2)(B) (driving record information is not confidential under chapter 411), § 411.083(b)(3) (person who is the subject of the criminal record information can obtain his own CHRI from Department of Public Safety).

The records you submitted also appear to contain information subject to section 411.192 of the Government Code, which makes records relating to concealed weapon licenses confidential except as provide therein. We note that section 411.192 provides that certain information relating to concealed weapon licenses is available from the Department of Public Safety. The city, however, must redact information subject to section 411.192 from the responsive records before releasing them.

The records also appear to contain information subject to section 552.130 of the Government Code, which provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

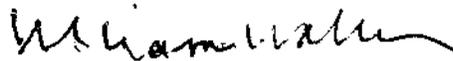
- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Information made confidential by section 552.130 must be redacted before release of the responsive information.

The submitted information also contains social security numbers. This office concluded in Open Records Decision No. 622 (1994) that amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii), make confidential any social security number obtained or maintained by any "authorized person" pursuant to any provision of law, enacted on or after October 1, 1990, and that any such social security number is therefore excepted from required public disclosure by section 552.101 of the Government Code. Prior to releasing the social security numbers, the city should ensure that the numbers were not obtained or maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990. Except for material in the responsive records made confidential under the provisions cited above, the city must release the requested records to the requestor. *See*, Gov't Code § 552.352 (criminal penalties for release of confidential information).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref.: ID# 121904

Enclosures: Submitted documents

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(w/o enclosures)