



June 13, 2001

Ms. Ann-Marie P. Sheely
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2001-2502

Dear Ms. Sheely:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148400.

The Travis County Sheriff's Office (the "sheriff's office") received a request for a copy of case number 1626/cause number 383568. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We note at the outset that the sheriff's office failed to comply with the requirements of section 552.301 of the Government Code in requesting a decision from this office regarding the submitted information. Section 552.301 provides in pertinent part:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.
- (b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). You state that the sheriff's office received the request for information on March 20, 2001. You did not request a decision from this office until April 11, 2001. Consequently, as you acknowledge, the sheriff's office failed to request a decision within the ten business day period mandated by section 552.301(a) and the information is presumed 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 disclosed. *See id.*; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); Open Records Decision No. 630 (1994).

You assert that the law enforcement interests of the Criminal Division of the Travis County Attorney's Office furnish a compelling reason for withholding the submitted information under section 552.108 of the Government Code. We recognize that the need of a law enforcement agency, other than the one that received the written request, to withhold information from disclosure may be a compelling reason to overcome the presumption that the information is public. *See* Open Records Decision No. 586 (1991). However, the Travis County Attorney's Office is handling this open records request on behalf of the sheriff's office. We cannot excuse your untimeliness in seeking a decision on behalf of the sheriff's office based on the needs of your own office. *Compare* Open Records Decision No. 586 (1991) (law enforcement interests of Texas Department of Public Safety provides compelling reason to overcome district attorney's failure to comply with ten day deadline). Accordingly, we will not address your arguments under section 552.108.

You also argue that the name and interview of a witness are protected from disclosure by section 552.101 of the Government Code in conjunction with the common law right to privacy. Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. If applicable, section 552.101 will provide a compelling reason to withhold information from disclosure. You state that prior decisions issued by our office have found that the names and statements of witnesses may be withheld from disclosure where disclosure might either subject the witnesses to intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement authorities. We note, and you concede, that those decisions addressed the applicability of section 552.108, not section 552.101. *See e.g.*, Open Records Decision Nos. 392 (1982), 297 (1981) (addressing statutory predecessor to Gov't Code § 552.108). You do not cite, nor are we aware of, any decisions that stand for the proposition that witness names and interviews are per se protected by the common law right to privacy. Moreover, after reviewing the submitted documents, we conclude that none of the information at issue is protected by a right of privacy. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (establishing that test for common law privacy under Gov't Code § 552.101 is that information is intimate and embarrassing and that there is no legitimate public interest in its disclosure). Therefore, we conclude that the witness name and witness interview in this instance are not excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common law right to privacy.

We note, however, that the submitted records contain a social security number. 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.* You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the sheriff's office to obtain or maintain social security numbers. Therefore, we have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I). We caution the sheriff's office, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security number at issue, you should ensure that the number was not obtained or is maintained by the sheriff's office pursuant to any provision of law enacted on or after October 1, 1990.

We also note that the records contain information that is excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. The submitted information contains a Texas driver's license number that is excepted from disclosure pursuant to section 552.130 of the Government Code. Accordingly, you must withhold the marked driver's license number from 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;

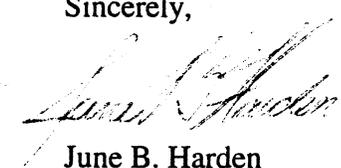
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things 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 Hadassah Schloss at 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/RJB/seg

Ref: ID# 148400

Encl. Marked documents

c: Ms. Wanda Faye Fuller
8801 North FM 620 #1412
Austin, Texas 78726
(w/o enclosures)