



April 4, 2002

Mr. Gary A. Scott
Assistant City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2002-1661

Dear Mr. Scott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160745.

The City of Conroe (the "city") received a request for "a copy of the Final Police Report that states the results of Ms. Lozano-Madrid's Blood Alcohol/Drug Analysis along with photographs that may be in your possession." You state that you have released basic information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

We first address the timeliness of your request for a decision. Subsections 552.301(a) and (b) provide:

(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.

¹You state that you have submitted a representative sample of the photographs held by the Conroe Police Department. We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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.

You state that the city received the request for information on January 10, 2002. Your letter requesting a decision from this office was dated January 16, 2002. However, the U. S. mail postmark on the letter is January 28, 2002, which is 11 business-days after the day the city received the request.² See Gov't Code 552.308. (the requirement is met in a timely fashion if the document is sent by first class United States mail properly addressed with postage prepaid and it bears a post office cancellation mark indicating a time within that period). Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(a) of the Government Code.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); see Open Records Decision No. 630 (1994). You claim that the requested information is excepted from disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code. However, section 552.108 is a discretionary exception to disclosure under the Public Information Act which may be waived by a governmental body.³ See Open Records Decision No. 586 (1991). Furthermore, the city has not demonstrated a compelling reason to withhold the information under section 552.108 of the Government Code. *But see id.* However, the application of sections 552.101, and 552.130 constitute such compelling reasons.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that 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 ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. See Gov't Code § 411.083.

²This presumes the city offices were closed January 21 in observance of Martin Luther King, Jr. Day.

³Discretionary 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)), 473 (1987) (governmental body may waive section 552.111), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

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 CHRI 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 CHRI 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. The information submitted for our review contains CHRI generated by TCIC and NCIC. Accordingly, the information, which we have marked, is excepted from required public disclosure by section 552.101 of the Government Code.

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[.]
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Therefore, you must withhold the Texas driver's license, vehicle identification, and license plate numbers, which we have marked, under section 552.130.

Finally, you contend that the social security numbers contained in the submitted information are confidential under the federal Social Security Act. A social security number or "related record" may be excepted from disclosure under section 552.101 of the Government Code 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 indicate that the social security numbers at issue were obtained or are maintained by the city for the purpose of obtaining criminal history information from the Department of Public Safety ("DPS"). You further indicate that section 411.086(b)(2) of the Government Code authorizes the DPS to adopt rules which may require a person requesting criminal history information about an individual

to submit to the DPS identifying numbers of the individual, including social security numbers. However, you do not specifically state whether the city obtained or maintained the social security numbers at issue in order to request criminal history information from the DPS. Moreover, you do not inform us as to whether the DPS actually requires or required the city to submit the social security numbers at issue in order to request criminal history information. We find that if the city obtained or maintains the social security numbers in order to request criminal history information from the DPS, and if the DPS actually requires or required the city to submit the social security numbers with its request for criminal history information, then the social security numbers are confidential pursuant to section 405(c)(2)(C)(viii)(I) of Title 42 of the United States Code on the basis of section 411.086(b)(2) of the Government Code. If the city did not obtain or maintain the social security numbers pursuant to a provision of law enacted on or after October 1, 1990, the social security numbers are not confidential under the Social Security Act and they must be released.

In summary, the city must withhold CHRI under section 552.101. The city must withhold Texas driver's license, license plate, and vehicle identification numbers under section 552.130. You must withhold the social security numbers in the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 411.086 of the Government Code, if the city obtained or maintains the social security numbers in order to request criminal history information from the DPS, and if the DPS actually requires or required the city to submit the social security numbers with its request for criminal history information. The city must release the remaining information 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

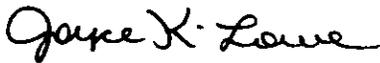
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure 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 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,



Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/sdk

Ref: ID# 160745

Enc: Submitted documents

c: Mr. Jose Luis Flores
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(w/o enclosures)