



October 29, 2002

Mr. J. David Dodd, III  
Nichols, Jackson, Dillard, Hager & Smith  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR2002-6128

Dear Mr. Dodd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171375.

The Allen Police Department (the "department"), which you represent, received a request for information relating to two alleged offenses. The department claims that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted. We also received correspondence from the requestor.<sup>1</sup> We note that the submitted information does not include any statements made by the arrested individual. The information indicates, however, that such a statement was obtained. We therefore assume that the department has released any other responsive information, such as the statement, that existed when the department received this request for information. If not, then the department must release that information at this time. *See Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000).* We note that chapter 552 of the Government Code does not require the department to release information that did not exist when it received this request or to create responsive information. *See Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).*

Next, we must determine whether the department complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) provides that "[t]he governmental body must ask for the attorney general's decision and state the exceptions that

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<sup>1</sup>*See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).*

apply . . . not later than the tenth business day after the date of receiving the written request [for information].” Section 552.302 provides that “[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.”

The department requested this decision on August 23, 2002. According to a date stamp on the copy of the request for information that you submitted to this office, the records unit of the department received the request on August 9, 2002. If that was the date of the department’s receipt of the request, then its request for this decision was timely under section 552.301(b). You state, however, that the department received the request on August 7, 2002. If that was the date of the department’s receipt of the request, then it has failed to comply with section 552.301(b). Because your statement of the date of receipt contradicts the date stamped on the request for information, we are unable to conclude that the department has requested this decision within the ten business days prescribed by section 552.301(b). Therefore, the requested information is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information from the public. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ).

The presumption that information is public under section 552.302 can generally be overcome by a demonstration that the information is confidential by law or that third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. The department’s claim under section 552.108 is not a compelling reason for non-disclosure under section 552.302. *See Open Records Decision No. 586 at 2-3 (1991)*. The department has waived its claims under sections 552.103 and 552.108 in failing to comply with section 552.301. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.--Dallas 1999, no pet.) (governmental body may waive section 552.103); *Open Records Decision Nos. 542 at 4 (1990)* (governmental body may waive litigation exception), *177 at 3 (1977)* (governmental body may waive law enforcement exception). Therefore, the department may not withhold the requested information under sections 552.103 or 552.108.

We note that the submitted information includes the arrested individual’s social security number. A governmental body may be required to withhold a social security number from the public under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if the governmental body obtained or maintains the social security number pursuant to any provision of law enacted on or after October 1, 1990.<sup>2</sup> *See Open Records Decision No. 622*

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<sup>2</sup>Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information that another statute makes confidential.

at 2-4 (1994). In this instance, however, the requestor identifies himself as the authorized representative of the arrested individual. As such, the requestor has a special right of access to the arrested individual's social security number. *See* Gov't Code § 552.023.<sup>3</sup> Therefore, the social security number may not be withheld from the requestor under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code.

The submitted information also includes the Texas driver's license number of the arrested individual. A Texas driver's license number must be withheld from the public under section 552.130 of the Government Code. *See* Gov't Code § 552.130(a)(1). However, as his authorized representative, the requestor also has a right of access to the arrested individual's Texas driver's license number under section 552.023. Therefore, the Texas driver's license number may not be withheld from the requestor under section 552.130.

In summary, the department must release the requested information, including the arrested individual's social security and Texas driver's license numbers, to the requestor. Should the department receive another request from a person who would not have a right of access to the social security and Texas driver's license numbers, the department should resubmit that same information and request another decision.

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

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<sup>3</sup>Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." *See also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body for information concerning himself).

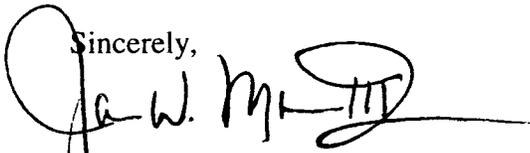
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a large, stylized initial "J" on the left.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 171375

Enc: Submitted documents

c: Mr. Paul G. Stuckle  
1001 20<sup>th</sup> Street  
Plano, Texas 75074  
(w/o enclosures)