



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

February 27, 2003

Ms. Melissa L. Barloco
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2003-1273

Dear Ms. Barloco:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177102.

Harris County (the "county") received a request for case number 0211071979. 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 reviewed the submitted information.

We must first consider your procedural obligations under the Public Information Act. Subsections 552.301(a) and (b) of the Government Code 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.

(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 county received the request for information under on November 26, 2002. You did not request a decision from this office until December 16, 2002. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(a) of the Government Code. Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302.

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 submitted information is excepted from disclosure under section 552.101 of the Government Code, which can provide a compelling reason for overcoming the presumption of openness raised by section 552.302. *See* 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). On the other hand, you have not provided a compelling reason for withholding the information from release under section 552.108. *See* Open Records Decision 586 (1991) (deciding that the need of another governmental body to withhold requested information may provide compelling reason for non-disclosure under section 552.108). Therefore, you may not withhold the information under section 552.108. However, we will consider your arguments under section 552.101.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 incorporates confidentiality provisions such as section 261.201(a) of the Family Code, which generally makes confidential reports of alleged or suspected child abuse or neglect and the files, reports, records, communications, and working papers used or developed in investigations made under chapter 261 of the Family Code. *See* Fam. Code § 261.201. You argue that case number 0211071979 is subject to section 261.201 because it contains information relating to an alleged assault against a child. However, section 261.201 applies only to investigations of abuse or neglect of individuals under the age of eighteen, whereas here, the report indicates that all victims were eighteen years of age or older. *See* Fam. Code § 101.003(a) (defining "child" for purposes of chapter 261 as a person under 18 years). Accordingly, you may not withhold the submitted information under section 261.201 of the Family Code in conjunction with section 552.101.

However, we find that the responsive information contains information subject to section 552.130 of the Government Code.¹ Section 552.130 provides in relevant part:

¹We note that the county did not raise section 552.130 of the Government Code. However, the Office of the Attorney General will raise mandatory exceptions including sections 552.101 and 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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[.]

The submitted information contains three Texas driver's license numbers. However, one of the driver's license numbers pertains to the requestor. As section 552.130 is intended to protect a person's privacy, under section 552.023 of the Government Code, a person who is the subject of the information or the person's authorized representative has a special right of access to information protected under section 552.130. Gov't Code § 552.023 (person has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interests). Accordingly, the requestor here has a special right of access to his driver's license information. Therefore, the county must release to the requestor his driver's license number. You must withhold the remaining Texas driver's license numbers, which we have marked, under section 552.130. The submitted information also contains three license plate numbers. If these license plate numbers relate to a vehicle title or registration issued to the requestor, than you must release them to the requestor pursuant to section 552.023 of the Government Code; otherwise, you must withhold the three license plate numbers, which we have marked, pursuant to section 552.130.

We also note that the submitted information contains social security numbers that may be subject to the federal Social Security Act. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. 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.* We note, however, that one of the social security numbers belongs to the requestor. Accordingly, this social security number must be released to the requestor pursuant to his special right of access to this information. *See* Gov't Code § 552.023. We have no basis for concluding that the remaining social security numbers in the file 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 Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the county pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, you must withhold the Texas driver's license numbers, which we have marked, pursuant to section 552.130 of the Government Code; however, you must release the requestor's driver's license number to the requestor pursuant to section 552.023. You must withhold the Texas license plate numbers we have marked with the exception of license plate numbers relating to a vehicle title or registration issued to the requestor, which you must release to the requestor pursuant to section 552.023. You must release the social security number of the requestor to the requestor pursuant to section 552.023. You may be required to withhold the remaining social security numbers pursuant to the federal Social Security Act. You must release the remaining responsive information.²

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).

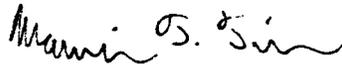
²We note that some of the information that you must release contains or consists of confidential information that is not subject to release to the general public. See Gov't Code § 552.352. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023. Because some of the information is confidential with respect to the general public, if the county receives a future request for this information from an individual other than the requestor or his authorized representative, the county should again seek our decision.

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 Dep't of Pub. 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,



Maverick F. Fisher
Assistant Attorney General
Open Records Division

MFF/seg

Ref: ID# 177102

Enc: Submitted documents

c: Mr. Eric Rencher
7018 Foxvalley Lane
Humble, Texas 77338
(w/o enclosures)