



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 30, 2003

Ms. Lisa M. Salinas
Custodian of Records
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2003-4459

Dear Ms. Salinas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183484.

The Baytown Police Department (the "department") received a request for a copy of a specified police report. You claim that portions of the requested information are excepted from disclosure pursuant to sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we must address the procedural requirements of section 552.301 of the Government Code. Section 552.301 provides that a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See* Gov't Code § 552.301(b). You state that the department received the written request for information on April 10, 2003. Therefore, the department had until April 24, 2003 to request a decision from our office regarding the requested information. However, the department did not request a decision concerning the requested information until April 25, 2003, more than ten business days after the date that the department received this request. Accordingly, we conclude that the department failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision from us. *See* Gov't Code § 552.301(b).

Because the department failed to comply with the procedural requirements of section 552.301 in requesting this decision, the requested information is now presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The department must demonstrate a compelling interest in order to overcome the presumption that the requested information is now public. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the requested information confidential or when third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although the department claims that some of the requested information is excepted from disclosure pursuant to section 552.108 of the Government Code, we note that the department has not demonstrated a compelling interest under that exception to disclosure that would allow any portion of the requested information to be withheld. *But see* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108 in certain circumstances). However, since the department also claims that portions of the requested information are excepted from disclosure pursuant to section 552.130 of the Government Code, we will address that claim.

Next, we note that the submitted information contains social security numbers which may be excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with federal law.¹ The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained or 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* Open Records Decision No. 622 (1994). The department has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain social security numbers. Therefore, we have no basis for concluding that the social security numbers contained within the submitted information are confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing these social security numbers, the department should ensure that they were not obtained and are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information 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.

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

See Gov't Code § 552.130. Accordingly, we conclude that the department must withhold the motor vehicle information that we have marked within the submitted information pursuant to section 552.130, but only if this information constitutes Texas motor vehicle information. However, some section 552.130 information contained within the submitted information pertains solely to the requestor. You may not withhold any of this information under section 552.130 of the Government Code. *See* Gov't Code § 552.023 (providing that individual has limited special right of access to information when only basis for excepting information involves protection of same individual's privacy interest); *see also* Open Records Decision No. 481 (1987).

In summary, some social security numbers that are contained within the submitted information may be confidential under federal law. The department must withhold the motor vehicle information that we have marked within the submitted information pursuant to section 552.130 of the Government Code, but only if this information constitutes Texas motor vehicle information. The department must release the remaining submitted 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 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 183484

Enc. Marked documents

c: Ms. Rickidra Johnson
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Baytown, Texas 77521
(w/o enclosures)