



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

July 30, 2003

Mr. Ricardo Gonzalez
City Attorney
City of Edinburg
P.O. Box 1079
Edinburg, Texas 78540

OR2003-5218

Dear Mr. Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185114.

The City of Edinburg (the "city") received a request for information relating to a specific traffic fatality. You state that the city does not maintain copies of the requested EMS records. You also state that you have released certain redacted records to the requestor. Finally, you claim that the submitted autopsy photographs are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, we note that the city has not fully complied with the requirements of section 552.301 of the Government Code in responding to this request. Section 552.301 prescribes procedures that a governmental body must follow when seeking to withhold responsive information from public disclosure. Specifically, the governmental body must seek a ruling from this office and submit, among other things, a copy of the specific information it seeks to withhold or representative samples of that information. *See* Gov't Code § 552.301. A governmental body need not request an open records determination under section 552.301 if: (1) this office has previously issued a ruling to the governmental body on the precise information at issue or (2) this office has issued a prior determination that the governmental body may withhold a specific category of information without the necessity of requesting a determination from this office. Gov't Code § 552.301(a); *see* Open Records Decision No. 673 (2001) (discussing standard for issuance of previous

determinations); *see, e.g.*, Open Records Decision Nos. 670 (2001) (concluding that all governmental bodies subject to Public Information Act may withhold information that is subject to Gov't Code § 552.117(2) without necessity of seeking decision from this office), 662 (1999) (concluding that Texas Department of Health may withhold certain information under Health & Safety Code § 161.254 without necessity of requesting ruling from attorney general).

In this instance, you have withheld portions of the responsive records without seeking a ruling from this office. Instead, you state that the city has redacted social security numbers and motor vehicle information from the responsive records in accordance with "state and federal statutes and numerous Attorney General opinions." It is clear from your statement that this office has not previously issued a ruling to the city allowing it to withhold the precise social security numbers and motor vehicle information at issue. Furthermore, after reviewing our records, we find that the city has never been issued a previous determination allowing it to withhold social security numbers and motor vehicle information from disclosure without the necessity of requesting a decision from this office. Thus, in accordance with section 552.301 of the Government Code, the city was statutorily required to request a ruling on all information it sought to withhold from the requestor. The city's failure to request a ruling on the social security numbers and motor vehicle information results in the presumption that this information is expressly public. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You have not articulated a compelling reason to withhold the social security numbers and motor vehicle information from disclosure. Furthermore, because you have not submitted this information for our review, we have no basis for finding that it must be withheld. Thus, the city must release the information it improperly withheld from disclosure. If you believe that the information you redacted is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below. Should you have further questions regarding your responsibilities under the Public Information Act, we encourage you to consult the Office of the Attorney General Website at www.oag.state.tx.us or contact the Open Government Hotline at 1-877-OPENTEX (673-6839). We will now address your arguments regarding the submitted autopsy photographs.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 11 of article 49.25 of the Code of Criminal Procedure provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Code Crim. Proc. art. 49.25, § 11. It does not appear that either exception applies in this instance. Thus, we agree that the submitted autopsy photographs are confidential and must be withheld from disclosure under section 552.101.

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,

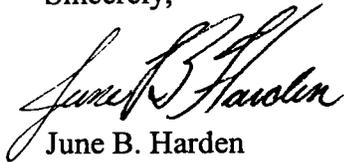
at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 185114

Enc: Submitted documents

c: Mr. James E. Scherr
Scherr, Legate & Ehrlich, P.L.L.C.
109 North Oregon, 12th Floor
El Paso, Texas 79901
(w/o enclosures)