



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 15, 2004

Mr. Gordon R. Hikel  
Brown & Hoffmeister, L.L.P.  
1717 Main Street, Suite 4300  
Dallas, Texas 75201

OR2004-1950

Dear Mr. Hikel:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200262.

The Town of Flower Mound (the "Town") received a request for a certain 1998 police report. You claim that the social security numbers in the requested information are excepted from disclosure under section 552.101 of the Government Code and the driver license numbers are excepted from disclosure under section 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 have no basis for concluding that any of the 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 Town pursuant to any provision of law, enacted on or after October 1, 1990.

You raise section 552.130 for driver's license numbers. These numbers appear in the arrest warrant, the affidavit to support the warrant and in other information. Section 552.130

excepts from disclosure information related 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. *See* Gov't Code § 552.130. Thus, based on section 552.130, ordinarily, you must withhold the Texas driver's license numbers that appear in the information. However, an arrest warrant and an affidavit presented to the magistrate in support of the issuance of the warrant are made public by statute. *See* Crim. Proc. Code art. 15.26. Generally, a governmental body may not use one of the Act's exceptions to withhold information that a statute other than the Act expressly makes public. *See* Open Records Decision Nos. 623 (1994), 451 (1986). Article 15.26 of the Code of Criminal Procedure states as follows:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Crim. Proc. Code art. 15.26. Thus, under this provision, the Town must release in their entirety the arrest warrant and affidavit presented to the magistrate in support of the issuance of the warrant. For the Texas driver's license numbers in the other information, the Town must withhold them from disclosure based on section 552.130.

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

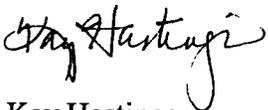
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/seg

Ref: ID# 200262

Enc: Submitted documents

c: Mr. Tony Jones  
3964 Victory Court  
Flower Mound, Texas 75028  
(w/o enclosures)