



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2005

Mr. David M. Swope
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2005-05718

Dear Mr. Swope:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 227157.

The Harris County Tax Assessor-Collector (the "tax assessor") received a request for a named individual's "application for a [b]lue [h]andicapped [p]lacad." We understand you to claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note and you acknowledge that the tax assessor has not complied with the procedural requirements of section 552.301 of the Governmental Code in requesting this ruling. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 552.302; *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 section 552.302 of the Government Code); Open Records Decision No. 319 (1982). A compelling reason 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). Because the applicability of section 552.101 of the Government Code generally provides a compelling reason, we will address your argument regarding that provision.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. Section 681.003 of the Transportation Code establishes the procedures by which an individual may obtain a disabled parking “placard.” Section 681.003(d) specifically provides:

Information concerning the name or address of a person to whom a disabled parking placard is issued or in whose behalf a disabled parking placard is issued is confidential and not subject to disclosure under [the Act].

Transp. Code § 681.003(d). Section 681.003(d) specifically makes confidential only the name and address of a person who was issued a disabled parking placard. We believe, however, that the purpose of section 681.003(d) is to protect the privacy interests of those individuals who are issued disabled parking placards. Since the requestor knows the name and address of the individual who was issued the placard, the mere redaction of such information from the records at issue would not serve the purpose of the statute in this instance. Accordingly, we conclude that the tax assessor must withhold the submitted records in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 681.003(d) of the Transportation Code.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

Government Code. If the governmental body fails to do one of these things, 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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 227157

Enc. Submitted documents

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(w/o enclosures)