



December 28, 1999

Mr. Duncan R. Fox
Assistant Chief
Legal Services
Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR99-3780

Dear Mr. Fox:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130840.

The Texas Department of Public Safety (the "department") received a request for all information regarding a traffic accident that was caused by a driver being pursued by state and local police. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exception you claim and reviewed a representative sample of the documents at issue.¹

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Among other requirements, 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." Gov't Code § 552.301(b). Otherwise, the requested

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information “is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.” Gov’t Code § 552.302.

You state that the department received the request for information on October 12, 1999. The department’s deadline for requesting an attorney general decision expired ten business days later on October 26, 1999. *See* Gov’t Code § 552.301(b). However, we received your request for an attorney general decision, via facsimile, on October 28, 1999. Therefore, the department missed its ten-day deadline. Consequently, absent a compelling reason to withhold the information, the requested records must be released.

You acknowledge that the department missed its deadline, but argue that release of the requested records would interfere with an ongoing criminal investigation and therefore a compelling reason exists to withhold the documents. While sections 552.103 and 552.108 of the Government Code may exempt such records from required public disclosure, neither section is a confidentiality provision. *See* Open Records Decision No. 473 at 2 (1987) (discretionary exceptions under the Public Information Act can be waived). Moreover, you have not argued that the requested records raise the interests of any third parties. Therefore, we do not find the ongoing criminal investigation a compelling reason to withhold the requested records. *But see* Open Records Decision No. 586 (1991) (the needs of another governmental body may be a compelling reason). However, we find that portions of the submitted documents are confidential by another source of law, and therefore a compelling reason exists to withhold these portions of the documents. *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).

The submitted documents contain a social security number. Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Accordingly, section 552.101 encompasses confidentiality provisions such as the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). This provision makes social security numbers confidential if they 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* Open Records Decision No. 622 (1994). Therefore, any social security numbers contained in the requested records that meet the criteria of section 405(c)(2)(C)(viii)(I) are confidential under this provision as encompassed by section 552.101. Accordingly, with the exception of any confidential social security numbers, the department must release the rest of the requested information to the extent that it is not confidential by other law.

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.

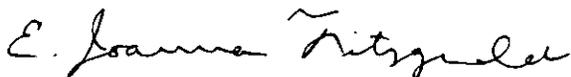
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. 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,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

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Ref: ID# 130840

Encl: Submitted documents

cc: Mr. Don R. Cotton
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(w/o enclosures)