



December 30, 1999

Mr. Lee Van Richardson, Jr.
City Attorney
City of Hempstead
2626 South Loop West, Suite 270
Houston, Texas 77054

OR99-3829

Dear Mr. Richardson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130985.

The City of Hempstead (the "city") received a request for all offense reports which have been sent to a certain individual. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e).

You did not, however, submit to this office within fifteen business days of receiving the open records request your general written comments stating the reasons why the stated exceptions apply or a signed statement or other sufficient evidence indicating on what date the city received the request. Although you state that you provided our office with a signed statement indicating when you received the request for information, the only information this

office received was a written notation on the request itself which states "Received 10/20/99 3:25 pm." It is not clear to this office who made the notation or when the document was actually received by the city. Assuming that this was the date the request was received, you did not submit your argument as to why the information is excepted from disclosure by section 552.108 of the Government Code until November 16, 1999, more than fifteen business days after the city's receipt of the written request for information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Gov't Code § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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). We do not believe that you have demonstrated a compelling reason under section 552.108 to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991) (need of another governmental body to withhold information may provide compelling reason for nondisclosure when governmental body fails to timely request a decision under section 552.301). Thus, you may not withhold the responsive information from the requestor under section 552.108.

However, we note that the submitted information contains driver's license numbers. Section 552.130 of the Government Code excepts 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. Therefore, you must withhold the driver's license numbers. We have marked the information that you must withhold under section 552.130.

Additionally, the submitted information contains social security numbers. The social security numbers in the documents are confidential if they were obtained or are maintained by the county pursuant to any provision of law, enacted on or after October 1, 1990. 42 U.S.C. section 405(c)(2)(C)(vii); *see* Open Records Decision No. 622 (1994).

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,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ch

Ref: ID# 130985

Encl. Submitted documents

cc: Ms. C.M. Smith
P.O. Box 4992
Prarie View, Texas 77446
(w/o enclosures)