



January 4, 2000

Mr. Monty Wade Sullivan
Assistant City Attorney
City of Houston
P. O. Box 1562
Houston, Texas 77251-1562

OR2000-0010

Dear Mr. Sullivan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130764.

The Houston Police Department (the "department") received a written request for "all documents, records and physical evidence in your possession pertaining to the homicide of Andrew de Vries." You contend that the requested information¹ is excepted from disclosure under section 552.108(a)(2) of the Government Code.

The department received the records request on October 5, 1999. You requested a decision from this office on October 26, 1999. Section 552.301(a) of the Government Code requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold unless there has been a previous determination that the requested information is excepted from required public disclosure. When a governmental body fails to comply with the requirements of section 552.301, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. See *Hancock*, 797 S.W.2d at 381.

You note that this office has previously determined that the information at issue here is excepted from public disclosure pursuant to section 552.108 of the Government Code. In Open Records Letter Nos. 96-1049 (1996) and 96-1114 (1996), this office acknowledged the Texas Supreme Court's ruling in *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996) that

¹Tangible objects such as physical evidence held by the department are not subject to the provisions of the Public Information Act. See Gov't Code § 552.002 (defining "public information").

“prosecutors may withhold from disclosure information relating to criminal investigations regardless of whether the investigation is active or closed,” and concluded that because the records at issue “relate to a criminal investigation, the city [of Houston] may withhold the requested records under section 552.108.”

Subsequent to the issuance of Open Records Letter Nos. 96-1049 and 96-1114, however, the Seventy-fifth Legislature amended section 552.108, effective September 1, 1997. Because former section 552.108 and the court’s ruling in *Holmes v. Morales*, which construed former section 552.108, are superseded by the amended section, the former rulings on which you rely are no longer applicable. Consequently, because the information at issue is not governed by a previous determination by this office, the requested information is presumed to be public and must be released unless there exists a compelling reason for non-disclosure.

You have not shown any compelling reason why the information at issue should not be released. We have reviewed the information at issue and, except for the categories of information discussed below, this office could discern no compelling reason for withholding any of the information at issue. We conclude, therefore, that the requested records, including photographs, tape recordings, and video tapes, must be released to the requestor in their entirety, with the following exceptions.

Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 at 1 (1982), we will raise “mandatory” exceptions because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Gov’t Code § 552.352.

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Sections 772.118, 772.218 and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 911 callers furnished by a service supplier. *See* Open Records Decision No. 649 (1996). Section 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 911 telephone numbers and addresses. Section 772.401, *et seq.* If the emergency communication district that provides services to the department is subject to either section 772.118, 772.218, or 772.318, the originating telephone numbers and addresses obtained from those services are excepted from public disclosure pursuant to section 552.101 of the Government Code as information deemed confidential by statute.

We note that some of the records at issue contain individuals' social security numbers. This office concluded in Open Records Decision No. 622 at 3 (1994) that 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii)(I), make confidential any social security number obtained or maintained by any "authorized person" pursuant to any provision of law enacted on or after October 1, 1990, and that any such social security number is therefore excepted from required public disclosure by section 552.101 of the Government Code, which excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

It is not apparent to us that the social security numbers contained in the records at issue were obtained or are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a law so as to be confidential under section 552.101 of the Government Code in conjunction with section 405(c)(2)(C)(vii)(I). We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, the department should ensure that these numbers were not obtained nor are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

Finally, section 552.130(a)(1) of the Government Code requires that the department withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Additionally, section 552.130(a)(2) requires the withholding of information relating to "a motor vehicle title or registration issued by an agency of this state," including motor vehicle license plate numbers. Accordingly, the department must withhold these types of information contained in the records at issue.²

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.

²We also note that among the documents at issue is a record of the Harris County Grand Jury. You have not argued, however, that the department holds this record as an agent of the grand jury, so as to bring the information within the "judiciary" exemption under section 552.003(1)(B) of the Government Code. *See, e.g.*, Open Records Decision No. 411 (1984) (list of witnesses to be subpoenaed by grand jury, when held by district attorney, deemed to be in constructive possession of judiciary); *but see* Open Records Decision No. 433 (1986) (list of impaneled grand jurors held by district attorney not within constructive possession of judiciary). The department may withhold the grand jury record only if the department in fact is holding this record as an agent of the grand jury.

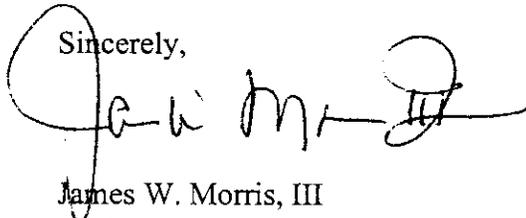
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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,

A handwritten signature in black ink, appearing to read 'J W Morris III', written over a large, light-colored circular mark.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/RWP/ch

Ref: ID# 130764

Encl. Submitted documents

cc: Mr. Ian B. McKenna
92, LeMoyne Crescent
Lethbridge, Alberta
Canada T1K4A5
(w/o enclosures)