



January 13, 2000

Ms. Kimberley Mickelson
Olson & Olson
Three Allen Center
333 Clay Street, Suite 3485
Houston, Texas 77002

OR2000-0131

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131206.

The City of Friendswood (the "city") received a request for documents relating to animal control violations. You claim that some of the responsive information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.

We note that under section 552.301(e), a governmental body is required to submit to this office (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, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office a copy of the written request for information or copies or representative samples of the specific information that was requested. Failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public. In order to overcome this legal presumption, a governmental body must provide compelling reasons why the information should not be disclosed. Gov't Code § 552.302; *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). The applicability of a mandatory exception provides such a compelling demonstration.

Section 552.101 of the Government Code excepts from disclosure information that is made confidential by law, including information made confidential by statute. We note that a social security number is excepted from required public disclosure under section 552.101 of

the act in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). You state that the social security numbers at issue are obtained by the city's police department pursuant to an internal *policy*. A governmental body's internal policy is not a *provision of law* enacted on or after October 1, 1990. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (agency rule may not make information confidential in circumvention of Public Information Act). Consequently, the city may not withhold the social security numbers under section 552.101 in conjunction with 42 U.S.C. § 405(c)(2)(C)(viii)(I).

Section 552.130 of the Government Code governs the release and use of motor vehicle record information. Section 552.130 provides in pertinent part:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Therefore, you must withhold from the responsive documents driver's license, license plate, and vehicle identification numbers in accordance with section 552.130 of the Government 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

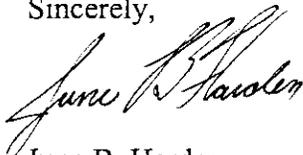
governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

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, 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 131206

cc: Mr. Jeff Branscome
308 Woodstream
Friendswood, Texas 77546