



February 7, 2000

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

OR2000-0455

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# 131934.

The City of Friendswood (the "city") received a request, numbered 17, for "all documentation sent [to] or received from the Texas Attorney General's Office from November 1, 1999 through November 15, 1999." In a separate letter of the same date, the same requestor asked for all documentation concerning himself created or received by the city during the same time. You do not address that request, number 13, in your brief to this office, so we will assume that you have released that requested information. We understand you to contend that the portions of the information responsive to request number 17 which relate to the city's pending requests for rulings from this office under chapter 552 are in "active use" and therefore not subject to disclosure at this time, and that the responsive records contain information which may be protected from disclosure depending on how this office rules in response to the city's requests for attorney general decisions.

Section 552.221(c) of the Government Code provides that if requested information is unavailable at the time of the request because it is in "active use," an officer for public information may certify this fact in writing to the requestor and set a time when the information will be available. We do not believe that the information at issue is in "active use" within the meaning of section 552.221(c). *See, e.g.,* Open Records Decision Nos. 121, 148 (1976). Therefore, information may not be withheld from the requestor on this basis.

Next, we are compelled to remind you that 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, “no later than the 15th business day after the date of receiving the written request,” the governmental body must submit to the attorney general “a copy of the written request for information” and “a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested” Gov’t Code § 552.301(e)(1)(B), (D). Otherwise, the requested 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.

In this case, you state that the city received the request for information on November 16, 1999. Accordingly, you were required to send this office a copy of the request as well as a copy of the requested information no later than December 9, 1999. However, we did not receive a copy of the request until December 14, 1999. Therefore, absent a compelling reason to withhold the information, the requested records must be released. The fact that portions of the submitted information reveal the information at issue in other pending requests for decisions of this office does not in itself provide a compelling reason to withhold that information. The city has waived permissive exceptions by failing to comply with section 552.301. However, we find that portions of the documents at issue concern the interests of third parties; therefore, a compelling reason exists to withhold at least these portions of the requested records. *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 items of information you submitted as responsive to the request include other requests for information, the city’s form letter responding to those requests, your requests for a decision from this office, our form letter acknowledging receipt of your request, and your briefs to this office claiming exceptions to required disclosure. Some of these requests appear to be pending with the attorney general. Information that is the subject of a request pending with this office may be withheld pending your receipt of our ruling; you must then comply with that ruling by releasing or withholding that information. However, it does not appear that the records submitted with this request reveal the information sought to be withheld. These records must be released. If you have received a ruling from this office regarding any of these requests, you must comply with the ruling as to the information at issue. In particular, included in the submitted information is one ruling from this office, Open Records Letter No. 99-3079 (1999), with the information at issue in the ruling attached. The ruling is public by nature and must be released. The attached information must be withheld as provided in the ruling. Also included is information which we identify as corresponding to another ruling issued by this office, Open Records Letter No. 99-3426 (1999). Again, you must comply with the ruling as to the incident report. The associated correspondence must be redacted so that it does not reveal the identity of the juvenile, then must be released.

Some of the submitted documents contain driver’s license numbers or license plate numbers. Those numbers must be withheld under section 552.130 of the Government Code, which

protects, *inter alia*, information related to “a motor vehicle operator’s or driver’s license or permit issued by an agency of this state” and “a motor vehicle title or registration issued by an agency of this state.”

All remaining information must be released. Although we note that a social security number is excepted from required public disclosure under section 552.101 of the Government Code 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, you state that the social security numbers obtained by the city’s police department are obtained 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). See Open Records Decision No. 622 (1994). 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).

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,

A handwritten signature in cursive script, appearing to read "Patricia Michels Anderson".

Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/jc

Ref: ID# 131934

Encl. Submitted documents

cc: Mr. Jeff Branscome
308 Woodstream Circle
Friendswood, Texas 77546
(w/o enclosures)