



August 18, 2000

Mr. John B. Dahill
Advisory Chief
County of Dallas
411 Elm Street
Dallas, Texas 75202

OR2000-3156

Dear Mr. Dahill:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138438.

The Dallas County District Attorney (the "district attorney") received a request to inspect and/or copy documents related to Lee Edwin Caldwell. You claim that portions of the requested information are excepted from disclosure under section 552.101 of the Government Code.

You failed to timely request an open records ruling from this office.¹ Gov't Code § 552.301. Generally, an untimely request for an open records ruling results in the presumption that the requested information is subject to required public disclosure. *Id.* § 552.302. However, because a successful claim under section 552.101 provides a compelling reason to withhold requested information, we have considered the exception you claim and reviewed the submitted information. *Id.* § 552.302; *see* Open Records Decision No. 150 (1977).

Section 552.101 excepts from disclosure information that is made confidential by law, including information that is made confidential by statute. Your section 552.101 claim is threefold, with separate assertions of statutory confidentiality for social security numbers, criminal history information, and juvenile records.

Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal

¹You explain that you did not understand that the information at issue was within the scope of the request.

Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that 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 id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act on the basis of that federal provision. We caution, however, that section 552.353 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the district attorney pursuant to any provision of law, enacted on or after October 1, 1990. However, in any event, the district attorney must not withhold the requestor's own social security number from the requestor. *See* Gov't Code § 552.023.

We turn to the criminal history record information. Title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history information which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to criminal history information it generates. *Id.* Section 411.083 of the Government Code deems confidential criminal history records that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain criminal history record information; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Other entities specified in Chapter 411 of the Government are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any criminal history record information generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Furthermore, any criminal history record information obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Consequently, the district attorney must not release the criminal history record information to the requestor.

Your third and final section 552.101 claim is for juvenile records. The juvenile conduct in the records at issue occurred on February 3, 1994. Juvenile prosecutor records concerning conduct that occurred before January 1, 1996, are governed by former section 51.14(a) of the

Family Code.² Former section 51.14(a) makes confidential a prosecuting attorney's juvenile records and permits inspection of such records only by certain enumerated parties. The requestor apparently is not one of those enumerated parties. Therefore, the district attorney must not release the juvenile record to the requestor.

The submitted records contain driver's license numbers and photographs of driver's licenses. Except for the requestor's license and number, section 552.130 of the Government Code protects these numbers and photos from required public disclosure.

In summary, the district attorney must release the requestor's social security number. The district attorney must also release the other social security numbers unless they were obtained or are maintained by the district attorney pursuant to any provision of law, enacted on or after October 1, 1990. Based on section 552.101 of the Government Code, the district attorney must not release to the requestor the criminal history information or the juvenile records in accordance with statutory law. Based on section 552.130, the district attorney must not release driver's license numbers or photographs of driver's licenses save those of the requestor.

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;

²While the Seventy-fourth Legislature repealed former section 51.14 of the Family Code, conduct that occurred prior to January 1, 1996, is nevertheless governed by that provision, since it was the law in effect at the time the conduct occurred, and since that provision is continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch 262, § 06, 1995 Tex. Gen. Laws 2517, 2591.

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,



Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/pr

Ref: ID# 138438

Encl. Submitted documents

cc: Mr. Lee Edwin Caldwell
548 West Oak Grove
Coppell, Texas 75019
(w/o enclosures)