



December 1, 2000

Mr. John M. Hill
Cowles & Thompson, P.C.
901 Main Street, Suite 4000
Dallas, Texas 75202-3793

OR2000-4566

Dear Mr. Hill:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143320.

The Addison Police Department (the "department"), which you represent, received a request for any reports, radio transmissions, audio tapes or 911 calls relating to a specified individual's arrest. The requestor also asks for a copy of any video or audio tapes generated at the jail during the booking process. 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 reviewed the submitted information.

Pursuant to section 552.301(b), a governmental body must ask for an attorney general decision and state the exceptions that apply no later than the tenth business day after the date of receiving the written request. The department received the request on October 2, 2000 and, therefore, had until October 16, 2000 to request a decision. Because the request for a decision was faxed to this office on November 8, 2000, you failed to request a decision within the ten business day period mandated by section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See Gov't Code* § 552.302; *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). You argue that the submitted information is excepted under section 552.108. Generally, section 552.108 does not provide a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 473 at 2 (1987) (discretionary exceptions under the Act can be waived).

However, you state that you believe that the needs of the city and the Dallas County District Attorney's Office (the "District Attorney") in conducting the prosecution outweighs the presumption of openness. In Open Records Decision No. 586 (1991), this office determined that the need of another governmental body to withhold requested information may provide a compelling reason for nondisclosure under section 552.108. First, we note that the city is not another governmental body whose need will provide a compelling reason for nondisclosure. Second, in order for this office to find a compelling reason, the governmental body who received the request must tell this office that it conferred with the other governmental body and that the other governmental body stated that it needed the information or the other governmental body must submit a letter to this office demonstrating its need of the requested information. In this instance, the department does not state that the District Attorney requested that the information be withheld but rather that it believes that the District Attorney needs the information for its prosecution. Thus, we do not believe that you have established the need of another governmental body. Accordingly, you may not withhold the submitted information under section 552.108 of the Government Code.

However, we note that the submitted documents contain information that is excepted under section 552.130 of the Government Code. Section 552.130(a) of the Government Code exempts from disclosure information that relates to a motor vehicle operator's or driver's license permit or personal identification document 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 marked driver's license number, license plate number, and personal identification number under section 552.130(a) of the Government Code.

We also note that the submitted information contains a social security number. Social security numbers may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal 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.* However, it is not apparent to us that the social security number was obtained or 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 number at issue was obtained or maintained pursuant to such a statute and

is, therefore, confidential under section 405(c)(2)(C)(viii)(I). We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Gov't Code § 552.352. Prior to releasing the social security number, the department should ensure that this number was not obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

In conclusion, the department may not withhold the submitted information under section 552.108 but must withhold the marked information under section 552.130.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/seg

Ref: ID# 143320

Encl. Marked documents and videotape

cc: Mr. Mike Christopher
Owner/Manager
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(w/o enclosures)