



May 2, 2001

Ms. Anne-Marie P. Sheely
Assistant County Attorney
Travis County
P.O. Box 1746
Austin, Texas 78767

OR2001-1781

Dear Ms. Sheely:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146687.

The Travis County Sheriff's Office (the "TCSO") received a request for all material related to incident number 00-14983, including all CAD or dispatch histories, 911 tapes, and witness statements. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The TCSO received the request on February 13, 2001. Pursuant to section 552.304, the requestor submitted a letter to this office, a copy of which was sent to the TCSO. The letter explained that the TCSO failed to provide him with the notice under subsection 552.301(d) that the TCSO is seeking an attorney general decision within ten business days following the date of the TCSO's receipt of the request. The requestor attached a copy of the envelope which enclosed the TCSO's notice to the requestor that the TCSO was seeking a decision from this office under the Public Information Act. See Gov't Code § 552.304. The copy of the envelope which accompanies this uncontested commentary indicates that such notice to the requestor was not postmarked until March 1, 2001. The tenth business day following the TCSO's receipt of the request for information is February 28, 2001.

Section 552.301 of the Government Code, in pertinent part, provides:

(d) A governmental body that requests an attorney general decision under Subsection (a) must provide to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the requestor's written request:

(1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general

about whether the information is within an exception to public disclosure; and

(2) a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

Accordingly, the TCSO failed to provide notice to the requestor within the required statutory period. *See* Gov't Code § 552.308. The time limitations found in section 552.301 are express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). When the requestor is not provided with the information required within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.*, Open Records Decision Nos. 150 (1977), 630 (1994) (presumption of openness overcome by showing that the information is made confidential by another source of law or affects third party interests). Sections 552.103 and 552.108 of the Act, as discretionary exceptions, do not demonstrate compelling reasons to withhold information from the public and thereby do not overcome the presumption of openness under section 552.302.¹ *But see* Open Records Decision No. 586 (1991) (compelling need of another governmental body). However, you assert that some of the requested information does not exist, or that it is excepted in whole or in part from required disclosure pursuant to section 552.101 under common law privacy and section 552.130. The applicability of sections 552.101 and 552.130 to the submitted information provides a compelling reason which will overcome the presumption that the information is public. Therefore, we will address your exceptions.

Regarding dispatch tapes or 911 tapes, you inform us that the TCSO policy concerning 911 tapes is such that the tapes are retained for three to six months, depending upon call volume, before the tapes are recycled for further use. You further inform us that as a result, there are no longer any 911 tapes in existence which are responsive to the request. The Public Information Act does not require a governmental body to disclose information that did not

¹Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding), 549 at 6 (1990) (governmental body may waive informer's privilege), 522 at 4 (1989) (discretionary exceptions in general).

exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Thus, the TCSO is under no duty to disclose the tapes.

Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses the common law right to privacy. The common law right to privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977).

The Texas Supreme Court in *Industrial Foundation* articulated examples of information about private citizens that meets the first prong of this test, and included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has also acknowledged such privacy interests. See, e.g., Open Records Decision Nos. 470 (the fact that a person broke out in hives as a result of severe emotional distress is protected by common law privacy), 455 (1987) (the kinds of prescription drugs a person is taking is protected by common law privacy), 343 (1982) (information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, and emotional/mental distress is protected by common law privacy). Due to the public interest in the information, we do not agree that the information you have marked for redaction meets both prongs of the common law privacy test so as to be excepted from disclosure under section 552.101. It must therefore be released.

Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

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

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

The information at issue contains a driver's license number which you have highlighted. Accordingly, you must withhold this highlighted copy of the Texas driver's license number pursuant to this provision.

Finally, the information contains social security numbers. 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 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 information are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 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 TCSO pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, the TCSO need not release any tapes of dispatch calls or 911 calls. The balance of the requested information, with the exception of the driver's license number highlighted therein, must be released.

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,



Steven Bohl
Assistant Attorney General
Open Records Division

SB/tr

Ref: ID# 146687

Encl: Marked documents

cc: Mr. Kevin Page
911 E. 37th
Austin, Texas 78705
(w/o enclosures)