



May 25, 2001

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

OR2001-2157

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# 147669.

The police department for the Town of Addison (the "town"), which a member of your firm represents as city attorney, received a request for "the police report and video tapes of the arrest of [a named individual] for the offense of DWI that occurred in the early morning hours of March 7, 2001." You have submitted for our review the responsive information, consisting of an "Incident/Offense/Arrest Report" and a videotape. You assert that this information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, 552.129, and 552.130 of the Government Code. The requestor, an attorney who appears to be representing the named individual, has also submitted comment to this office. *See Gov't Code § 552.304.* We have considered the asserted exceptions and submitted comments and we have reviewed the submitted information.

We first address certain procedural matters. The requestor contends the town did not timely comply with sections 552.301(b) and (d) of the Government Code. Section 552.301 states in pertinent part:

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but *not later than the 10th business day after the date of receiving the written request.*

...

(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.

Gov't Code § 552.301(b), (d) (emphasis added). You represent that the written request was received by the town on March 9, 2001. The 10th business day after that date was March 23, 2001. Your initial correspondence to this office requesting a decision and asserting exceptions to disclosure is dated, and a copy was received by this office, on March 23, 2001. We thus conclude that the town timely complied with section 552.301(b). As to section 552.301(d), however, the requestor has provided this office a copy of your correspondence to the requestor that, evidently, was sent pursuant to section 552.301(d)(1). This correspondence is dated March 27, 2001, and the requestor indicates he received it on that date. Thus, the town did not timely comply with section 552.301(d).

In addition, section 552.301(e)(1)(A) required the town to provide this office, no later than the 15th business day after the date of receiving the request, "written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld." You did not submit any comments in support of the section 552.101, 552.111, or 552.129 assertions.¹

If a governmental body fails to request a decision in accordance with section 552.301 and provide the requestor with the information required by section 552.301(d), section 552.302 of the Government Code provides that the requested information "is presumed to be subject to required public disclosure and must be released absent a compelling reason to withhold the information." Gov't Code § 552.302; *see also 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). Generally, a compelling reason under section 552.302 is demonstrated only where the information is confidential by law or its release implicates third party interests. *See, e.g.*, Open Records Decision No. 150 (1977). Sections 552.103 and 552.108, asserted by the town on its own

¹We have no indication that any of the information is excepted from disclosure under sections 552.111 or 552.129. We therefore do not further address these exceptions.

behalf, are discretionary exceptions that do not demonstrate a compelling reason sufficient to overcome the section 552.302 presumption of openness.² Accordingly, none of the information may be withheld under these exceptions.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Although you have submitted no comments in support of this exception, we note that the submitted report contains the social security number of the named individual. This information is excepted from public disclosure under section 552.101 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 the town pursuant to any provision of law enacted on or after October 1, 1990. See* Open Records Decision No. 622 (1994). We have no basis for concluding that the social security number information at issue was obtained or is maintained by the town pursuant to such a law. We also believe that section 405(c)(2)(C)(viii)(I) is intended to protect the privacy of the subject of the information. Thus, if the requestor is in fact an attorney for the named individual, then even if the information was obtained or is maintained pursuant to such a law, the information is not confidential with respect to the requestor. Section 552.023 of the Government Code provides that a person’s authorized representative has a special right of access, beyond that of the general public, to information otherwise protected by laws intended to protect the person’s privacy. *See* Gov’t Code § 552.023. If the requestor is not an authorized representative for the named individual, and if the social security number information was in fact obtained or is maintained by the town pursuant to a provision of law enacted on or after October 1, 1990, then the individual’s social security number must be withheld pursuant to section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I). *See also* Gov’t Code § 552.352.

The submitted report also contains the named individual’s driver’s license number and the license plate number of the individual’s vehicle. 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[.]

²Discretionary 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. 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).

We believe this provision is intended to protect an individual's privacy. If the requestor is representing the named individual, the requestor has a special right of access to the individual's section 552.130 information. Gov't Code § 552.023. But if the requestor is not an authorized representative of the named individual, you must withhold the Texas driver's license number and license plate number under section 552.130.

Finally, section 552.119 of the Government Code excepts from public disclosure a photograph of a peace officer³ that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. This office has construed section 552.119 to require withholding of a photograph of a peace officer, absent one of the three above-stated exceptions and absent the written consent of the officer. Open Records Decision No. 502 (1988). The submitted videotape includes images of peace officers and it does not appear that any of the exceptions are applicable. You have not informed us that the peace officers have executed any written consents to disclosure. Thus, we conclude that the videotape must be withheld under section 552.119, to the extent it discloses the images of peace officers. If the town has the ability to edit the tape to remove or conceal the peace officers' images, then the remaining information on the videotape is subject to release.

In summary, the submitted report is not excepted from disclosure and must be released to the requestor in its entirety if the requestor is the named individual's attorney. Otherwise, the report is still subject to release to the requestor, but the town must first redact the individual's driver's license number and license plate number, and may also be required to redact the individual's social security number, as explained above. The videotape is excepted from disclosure under section 552.119, to the extent it depicts the images of peace officers.

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.

³"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

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).

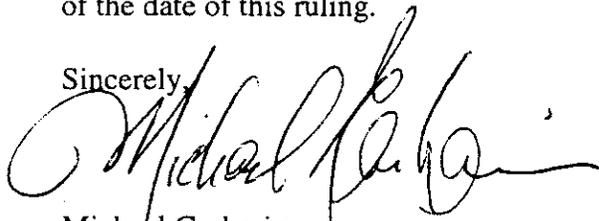
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink, appearing to read "Michael Garbarino", written over a horizontal line.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 147669

Encl. Submitted documents

cc: Mr. Kenneth D. Carden
The Carden Law Office
4347 West Northwest Highway #120-255
Dallas, Texas 75220
(w/o enclosures)