



June 19, 2001

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2001-2593

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148573.

The Texas Department of Public Safety (the "department") received a request for information regarding an accident investigation. You state that the department will release all of the responsive information in its possession with the exception of certain information in the investigating officer's investigative file. You claim that portions of the requested information are excepted from disclosure under sections 552.130 and 411.083 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address the department's obligations under section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(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.

You state that the department received the request for information on March 15, 2001. You did not request a decision from this office until April 16, 2001. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(a) of the Government Code. Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). Compelling reasons exist when the information is made confidential by law or affects the interest of a third party. Open Records Decision No. 630 at 3 (1994). You argue that portions of the responsive information are excepted under sections 552.130 and 441.083 of the Government Code.

You contend that the document you have submitted as Exhibit B should be withheld in its entirety pursuant to section 411.083 of the Government Code. Section 411.083 provides that any criminal history record information ("CHRI") maintained by the department is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the department pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from department also apply to CHRI obtained from other criminal justice agencies). CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). Based on our review of the document submitted as Exhibit B, we conclude that it does not consist of CHRI and, therefore, may not be withheld from disclosure pursuant to section 411.083 of the Government Code.

You also argue that the information that you have highlighted in Exhibit A is excepted from disclosure under section 552.130 of the Government Code. You request that this office issue a previous determination allowing the department to withhold information related to a driver's license or permit, motor vehicle title or registration, and personal identification cards issued by an agency of this state under section 552.130 of the Government Code. This office has already issued a previous determination under section 552.301(a) that applies to the following types of information requested of the department: (1) a Texas driver's license number; (2) a Texas license plate number; (3) a Texas vehicle identification number; and (4) an entire copy of a Texas driver's license. Open Records Letter No. 2001-2047 (2001). Therefore, the department may rely on Open Records Letter No. 2001-2047 to withhold this type of information in the submitted documents. We have marked the Texas driver's license numbers, Texas license plate numbers, and vehicle identification numbers that must be withheld under section 552.130, in accordance with Open Records Letter No. 2001-2047. We have also marked additional information, including the document submitted as Exhibit B, that must be withheld pursuant to section 552.130 of the Government Code.

Finally, we note that you have highlighted social security numbers and a State Trooper identification number in Exhibit A as information that should be withheld under section 552.130 of the Government Code. Such information is not excepted under section 552.130 and may not be withheld from disclosure on that basis. However, 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.* 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 numbers at issue are 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. Prior to releasing the social security numbers at issue, the department should ensure that the numbers were not obtained or are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

To summarize, we conclude that: (1) Exhibit B does not consist of CHRI and, therefore, may not be withheld from disclosure pursuant to section 411.083 of the Government Code; (2) the department may rely on Open Records Letter No. 2001-2047 to withhold the Texas driver's license number, Texas license plate numbers, and vehicle identification numbers in the submitted documents; (3) we have marked additional information, including the document submitted as Exhibit B, that must be withheld under section 552.130; and (4) prior to releasing the social security numbers at issue, the department should ensure that the numbers were not obtained or are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. The remaining information must be released to 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).

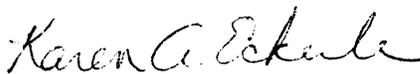
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 145873

Enc: Marked documents

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