



July 2, 2001

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

OR2001-2834

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# 149000.

The Texas Department of Public Safety (“department”) received a request for information related to a certain accident. You state that the department is “prepared to release its investigation file” except for certain highlighted information. You seek to withhold the highlighted portions under sections 552.101 and 552.130 of the Government Code. We have considered your arguments.

We first address your arguments concerning the confidentiality of the social security numbers in the submitted documents. You state that the “witnesses provided their social security numbers voluntarily, so this is not an instance in which disclosure of the social security number is prohibited by statute.” Thus, the social security numbers are not protected by section 405(c)(2)(C)(viii) of Title 42 of the United States Code, which makes confidential social security numbers obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. You assert that the social security numbers are confidential under common law privacy in conjunction with section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception applies to information made confidential by the common law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under

section 552.101 in conjunction with the common law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that release of the information would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *Id.* This office has concluded that social security numbers are not protected by the common law right of privacy. *See* Open Records Decision No. 622 (1994). Thus, you must release the social security numbers.

Next, we consider your claims under section 552.130 of the Government Code and section 411.083 of the Government Code. This office recently issued Open Records Letter No. 2001-2047 (2001), which serves as a previous determination under section 552.301(a) of the Government Code for the department with respect to section 552.130 and criminal history record information ("CHRI"), as defined in section 411.082 of the Government Code and as maintained by the Department of Public Safety under section 411.083 of the Government Code. Therefore, pursuant to that previous determination, you must withhold the license plate number, vehicle identification number, and CHRI. Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, fact, and circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly informed it need not seek a decision from this office to withhold information in response to future requests).

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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/dam/seg

Ref: ID# 149000

Encl. Submitted documents

cc: Mr. Andrew M. Wodesky  
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(w/o enclosures)