



September 11, 2001

Mr. James Eidson
Criminal District Attorney
Taylor County Courthouse
300 Oak
Abilene, Texas 79602-1577

OR2001-4044

Dear Mr. Eidson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151841.

The Taylor County District Attorney's Office (the "district attorney") received a request for its files in five specified cases. You inform this office that you will release some of the information that is responsive to this request. You claim that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted. As you do not mention the case of *State v. Michael Aguirre*, we assume that you have released any responsive information held by your office that relates to the *Aguirre* case. If you have not, then you must do so at this time. See Gov't Code §§ 552.301, .302.

Initially, we must address the timeliness of your request for this decision. Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to decide whether requested information may be withheld from public disclosure. Section 552.301(b) provides that "[t]he governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the 10th business day after the date of receiving the written request [for information]." Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information."

Your July 5, 2001 letter to this office states that your office "recently received the enclosed open records request" for the information at issue. You submitted a copy of the request for information. The request is not dated. Furthermore, the request bears no date-stamp or other indication of the date on which your office received the request. See Gov't

Code § 552.301(e)(1)(C) (providing that governmental body must submit signed statement as to date on which governmental body received request for information or evidence sufficient to establish that date). Thus, this office is unable to conclude that you requested our decision within 10 business days of the date of your receipt of this request for information, as required by section 552.301(b) of the Government Code. Therefore, the requested information is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of this information from public disclosure. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ).

The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or that third party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. The need of another governmental body to withhold information under section 552.108 also can provide a compelling reason under section 552.302. *See Open Records Decision No. 586 at 3 (1991)* (stating that the need of a governmental body, other than the one that failed to timely seek an open records decision, may in appropriate circumstances be a compelling reason for non-disclosure). Although you raise section 552.108, you do not demonstrate a compelling reason to withhold the requested information under this exception. Therefore, this information must be released under section 552.302, except to the extent that it contains information that is confidential by law or that implicates third party interests.

We note that the submitted documents contain social security numbers. A social security number may be confidential under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990.*¹ *See Open Records Decision No. 622 at 2-4 (1994)*. It is not apparent to this office that the district attorney either obtained or maintains any of these social security numbers 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 district attorney to obtain or maintain these social security numbers. Therefore, we have no basis for concluding that these social security numbers were obtained or are maintained pursuant to such a law and are therefore confidential under section 405(c)(2)(C)(viii)(I) of the federal law. We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing a social security number to the public, the district attorney should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that another statute makes confidential.

The submitted documents also contain Texas driver's license numbers and a license plate number. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from [required public disclosure] 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[.]

Gov't Code § 552.130(a)(1)-(2). You must withhold Texas driver's license and license plate numbers from public disclosure under section 552.130.

We also note the requestor's statement that her office represents one of the individuals to whom the submitted records pertain. If the requestor is this individual's authorized representative, then she has a special right of access to information that is protected from public disclosure by laws that are intended to protect this individual's privacy interests. *See* Gov't Code § 552.023.² If the requestor has a special right of access under section 552.023, then this individual's social security and driver's license numbers may not be withheld from the requestor under sections 552.101 or 552.130.

In summary, you may not withhold the submitted documents from the requestor under section 552.108 of the Government Code. However, these documents contain social security numbers that may be confidential under section 552.101 in conjunction with federal law and information relating to motor vehicle records that must be withheld under section 552.130. With those exceptions, these documents must be released. The requestor may also have a special right of access to one of the social security numbers and one of the driver's license numbers under section 552.023.

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

²Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."

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).

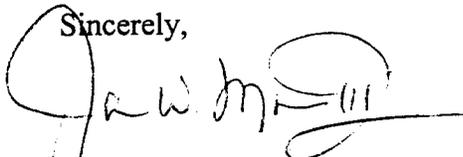
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 151841

Enc: Submitted documents

c: Ms. Danalynn Recer
Louisiana Crisis Assistance Center
412 Main Street
Houston, Texas 77002
(w/o enclosures)