



October 2, 2001

Mr. Steven D. Selbe
Attorney for the City of Onalaska
Cotton, Bledsoe, Tighe & Dawson
1415 Louisiana, Suite 2100
Houston, Texas 77002-7351

OR2001-4418

Dear Mr. Selbe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152674.

The City of Onalaska (the "city"), which you represent, received a request for information relating to a shooting. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.¹

We first note that the submitted information comes within the scope of section 552.022 of the Government Code. Section 552.022 provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1) (emphasis added). In this instance, the submitted information consists of completed investigations. Therefore, this information must be released under section 552.022(a)(1), unless it is excepted from disclosure under section 552.108 or expressly confidential under other law. Section 552.103 is a discretionary exception to public disclosure that protects the governmental body's interests and may be waived. As

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the city to withhold any responsive information that is substantially different from the submitted information. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.-Dallas 1999, no pet.) (stating that governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (litigation exception does not implicate third-party rights and may be waived by governmental body). Thus, the city may not withhold the requested information under section 552.103.

We note, however, that the submitted records 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.*² *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the city obtained or maintained the social security numbers in question 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 city to obtain or maintain a social security number. We therefore have no basis for concluding that the social security numbers in question 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 the city, 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, the city should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

We also note that the submitted documents contain driver's license, license plate, and vehicle identification numbers. 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). The city must withhold all Texas driver's license, license plate, and vehicle identification numbers that appear in the submitted documents under section 552.130.

²Section 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.

In summary, the requested information is subject to section 552.022(a)(1) of the Government Code and thus may not be withheld from disclosure under section 552.103. However, the submitted documents contain social security numbers that may be confidential under section 552.101 of the Government Code in conjunction with federal law. Texas driver's license, license plate, and vehicle identification numbers must be withheld under section 552.130. With these exceptions, the requested information 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).

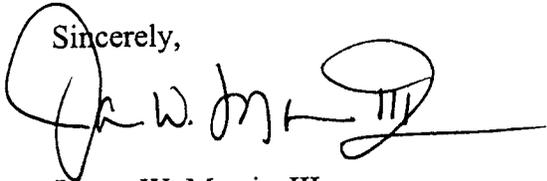
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dept. 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 "J.W. Morris III", with a long horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 152674

Enc: Submitted documents

c: Mr. Debra Barber
P.O. Box 1733
Livingston, Texas 77351
(w/o enclosures)