



October 3, 2001

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
Box 850137
Mesquite, Texas 75185-0137

OR2001-4453

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152715.

The City of Mesquite (the "city") received a request for "all information or records pertaining to the 'On the Border' restaurant located at 1414 Gross Road, Mesquite, Texas from the date it opened until the present." You claim that the submitted information is made confidential by various state statutes or by the common law right to privacy and is, therefore, excepted from required public disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

We note, and the city acknowledges, that it failed to seek an open records decision from this office within the statutory ten-day period. *See* Gov't Code § 552.301. The city's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of section 552.101 provides such a compelling reason.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 81.046 provides, in pertinent part:

- (a) Reports, records, and information furnished to a health authority or the department that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by Subsection (c) and (d).

Health & Safety Code § 81.046(a), (b). In Open Records Decision No. 577 (1990), this office concluded that any information acquired or created by the Texas Department of Health or a health authority during an investigation under chapter 81 is confidential and may not be released unless an exception set out in the statute applies. A "health authority" is a physician appointed under the provisions of chapter 121 of the Health and Safety Code to administer state and local laws relating to public health within the appointing body's jurisdiction. *Id.* § 121.021. In the case of a city that has established a local health department, the health authority for the city is the physician appointed as director of the local health department. *Id.* §§ 121.031, .033.

You state that Tabs 2a-2c comprise the files, reports, records and communications used or developed in connection with reported incidents of confirmed or suspected cases of Hepatitis A. It appears from our review of these documents that the investigation was conducted by the Mesquite Health Department. Furthermore, it does not appear that any of the permissive release provisions to section 81.046 apply. Thus, we conclude that the city must withhold Tabs 2a-2c under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.

Next, you claim that some of the information in Tab 3 is excepted from disclosure under section 552.101 in conjunction with common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). You assert that the tax identification number of a business is protected by common law privacy. We note, however, that common law privacy protects the rights of individuals, not corporations. Open Records Decision No. 620 (1993); *see also United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co., Inc.*, 777 S.W.2d 434, 436 (Tex. App.--Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)); Open Records Decision No. 192 (1978) (stating that right of privacy protects feelings and sensibilities of human beings and does not protect evaluation report on private college). Therefore, the federal tax identification number is not protected by common law privacy.

We also note that Tab 3 contains social security numbers. 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.* We have no basis for concluding that any of the social security numbers in Tab 3 are confidential under section 405(c)(2)(C)(viii)(I), and are, therefore, excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number in the submitted documents, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

Finally, we note that Tab 3 contains information that is excepted from disclosure under section 552.130 of the Government Code. 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;
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Thus, we agree that you must withhold the marked Texas drivers' license numbers under section 552.130. Since, by its terms, section 552.130 only applies to motor vehicle information issued by the State of Texas, the Illinois driver's license number must be released.

In summary, the city must withhold Tabs 2a, 2b, and 2c under section 81.046 of the Health and Safety Code. Prior to releasing any social security number in the submitted documents, the city should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. The city must withhold the Texas drivers' license numbers under section 552.130. The remaining information in Tab 3 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).

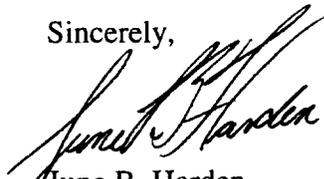
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 152715

Enc. Submitted documents

c: Mr. Frank Giunta
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(w/o enclosures)