



April 11, 2002

Sheriff Billy R. Nelson  
Polk County  
1733 North Washington  
Livingston, Texas 77351

OR2002-1804

Dear Sheriff Nelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161144.

The Polk County Sheriff's Office (the "sheriff") received a request for arrest records and a copy of a videotape relating to two separate arrests of the requestor. You claim that the requested information is excepted from disclosure under section 552.108(a)(1) of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the sheriff'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 indicate that the sheriff received the request for information "on or about" January 17, 2002. Your request for a decision from this office is postmarked February 4, 2002. 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 submitted, 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). You do not demonstrate a compelling reason to withhold information under section 552.108. See Open Records Decision No. 586 (1991) (need of another governmental body to withhold information from disclosure provides compelling reason under section 552.108). You have not raised any other specific compelling reasons to overcome the presumption that the information is public. Thus, the requested information may not be withheld under section 552.108.<sup>1</sup>

We note, however, that a portion of the submitted videotape is protected from disclosure under section 552.119 of the Government Code. Section 552.119 excepts from public disclosure a photograph of a peace officer<sup>2</sup>, that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. This office has determined that this provision excepts such photographs from disclosure without the need for any specific showing that release of the photograph would endanger the life or safety of the officer. Open Records Decision No. 502 (1988). A portion of the submitted videotape appears to include the images of several peace officers. It does not appear that any of the exceptions to section 552.119 apply. Furthermore, you have not informed us that any of the officers depicted in the videotape executed a written consent to disclosure of their pictures. Therefore, under section 552.119 of the Government Code, the sheriff must withhold

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<sup>1</sup> We note that a portion of the requested information is protected from disclosure under section 552.101 and common law privacy. In this instance, however, the information relates to the requestor who has a special right of access to the information under section 552.023. Therefore, the sheriff must release the information to the requestor. In the event that the sheriff receives another request for this information from someone other than this requestor or his authorized representative, the sheriff must ask this office for a decision whether the information is subject to public disclosure.

<sup>2</sup> "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

any portion of the videotape that includes the image of a peace officer. The remainder of the videotape, however, is not protected under section 552.119 and must be released to the requestor.<sup>3</sup>

We note that the submitted information contains driver's license numbers. Section 552.130 of the Government Code 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; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Section 552.130 protects the privacy of the individual to whom the information relates. A person or a person's authorized representative has a special right of access to information held by a government body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests. *See Gov't Code § 552.023.* The submitted information contains the requestor's own Texas driver's license number. The requestor has a special right of access to this information, therefore the sheriff must release the requestor's own Texas driver's license number to the requestor under section 552.023. The sheriff must withhold the Texas driver's license number we have marked under section 552.130.

The submitted information also contains social security numbers. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. 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 the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We note, however, that section 552.101 protects the privacy of the individual to whom the information relates. A person or a person's authorized representative has a special right of access to information held by a government body that

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<sup>3</sup> If the sheriff does not have the technology necessary to obscure the peace officers' faces on the videotape, then the sheriff must withhold the entire videotape from disclosure under section 552.119.

relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests. See Gov't Code § 552.023. The submitted information contains the requestor's own social security number. The requestor has a special right of access to this information, therefore the sheriff must release the requestor's own social security number to the requestor under section 552.023. With regard to any remaining social security numbers contained in the submitted information, we caution 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 information, the sheriff should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, we conclude that (1) the sheriff may not withhold the submitted information and videotape under section 552.108; (2) the sheriff must withhold any portion of the videotape that contains an image of a peace officer under section 552.119; (3) the sheriff must withhold the driver's license number we have marked under section 552.130; (4) the requestor's own driver's license number and social security number must be released to the requestor under section 552.023. The remainder of the submitted information and videotape 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/sdk

Ref: ID# 161144

Enc: Submitted documents

c: Mr. Robert Hill  
Route 2, Box 130  
Livingston, Texas 77351  
(w/o enclosures)