



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

January 13, 2003

Ms. Myrna S. Reingold
Galveston County Legal Department
4127 Shearn Moody Plaza
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Galveston, Texas 77550-1454

OR2003-0266

Dear Ms. Reingold:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174878.

The Galveston County Sheriff's Department (the "sheriff") received a request for the incident report and any other documents relating to the investigation of a specified boating fatality. You state that you have released some responsive information to the requestor. You claim, however, that portions of the requested information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state that the sheriff may not have submitted a request for an open records decision from this office within the ten business day time period prescribed by section 552.301 of the Government Code. In your request for a decision, you state that the sheriff is not able to state the date the request was received and does not have the original envelope bearing the post office cancellation mark indicating the date the request was mailed to the sheriff. We note that the request for information is dated October 10, 2002. We received your request for a decision on October 31, 2002. Accordingly, we conclude that the sheriff failed to timely submit this request for an open records decision within the ten business day deadline under section 552.301. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest exists when some other source of law makes the information confidential or when third party interests are at stake. Open

Records Decision No. 150 at 2 (1977). As the presumption of openness can be overcome by a showing that information is confidential by law, we will consider your arguments under sections 552.101 and 552.130.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 31.0391 of the Parks and Wildlife Code provides in pertinent part:

(a) The [Parks and Wildlife Department] or a county may not release the name or address of a person recorded in the [Parks and Wildlife Department] vessel and outboard motor ownership records unless the [Parks and Wildlife Department] or county receives a written request that:

(1) contains the requestor's name and address; and

(2) states that the use of the information is for a lawful purpose.

We find that section 31.0391 by its own terms applies to the name or address of a person recorded in vessel and outboard motor ownership records, and does not apply to the same kinds of information contained in other documents, such as the sheriff records at issue here. You do not indicate, nor does it appear, that the documents at issue consist of vessel and outboard motor ownership records. Thus, we determine the sheriff may not withhold the information you have highlighted pursuant to section 552.101.

Next, Texas driver's license and motor vehicle registration information is excepted from disclosure pursuant to 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; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

We agree that the sheriff must withhold the Texas driver's license number that you have highlighted under section 552.130 of the Government Code.

You also contend that the vessel owner's social security number is excepted from disclosure under section 552.101 in conjunction with chapter 730 of the Transportation Code. Section 730.004 of the Transportation Code prohibits the release of "personal information" about any person obtained in connection with a motor vehicle record by an agency that maintains or compiles motor vehicle records, except under certain circumstances not present here. "Personal information" is defined as including an individual's social security number, driver identification number, name, address, and telephone number. *See* Transp. Code § 730.003(6). In this case, however, we find that the sheriff, which compiled the information at issue, is not an "agency" of the state for purposes of section 730.004. *See* Transp. Code § 730.003(1) (defining "agency"). Accordingly, we determine that the sheriff may not withhold the owner's social security number pursuant to section 730.004 of the Transportation Code.

We note, however that the owner's social security number may be confidential under section 552.101 in conjunction with federal law. A social security number may be withheld in some circumstances 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 number and related records that are 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. *See id.* We have no basis for concluding that the social security numbers are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act 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 information, you should ensure that no such information was obtained or is maintained by the sheriff pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the sheriff must withhold the highlighted Texas driver's license number under section 552.130 of the Government Code. The vessel owner's social security number may be confidential under section 552.101 in conjunction with federal law. The remainder of the submitted information 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# 174878

Enc: Submitted documents

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