



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

January 30, 2003

Ms. Ruth H. Soucy
Deputy General Counsel
Open Government
Office of the Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2003-0655

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175803.

The Comptroller of Public Accounts (the "comptroller") received a request for the registration documents pertaining to certain arcade tax numbers registered under the names of two specified individuals. You state that have released some information to the requestor. You claim that the remainder of the requested information is 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 representative sample of information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we must address the comptroller's obligations under section 552.301 of the Government Code. Sections 552.301(a) and (b) provide:

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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 [Public Information 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 tenth business day after the date of receiving the written request.

You indicate that the comptroller received the original request for information on October 14, 2002. Thus, you were required to submit your request for a decision from this office no later than October 28, 2002. The submitted documents reveal that you released some information to the requestor by a letter dated October 28, 2002. However, you submitted your request for a decision from this office, stating the exceptions that you contend apply to the information you seek to withhold, on November 19, 2002. In your request for a decision, you state that you "made further inquiry" regarding this request pursuant to section 552.222 of the Government Code. *See* Gov't Code § 552.222 (providing that a governmental body may ask the requestor to clarify the request or narrow the scope of the request if what information is requested is unclear to the governmental body); Open Records Decision No. 663 at 5 (1999) (ten day deadline is tolled while governmental body and requestor are communicating for purpose of narrowing or clarifying a request, but resumes on the date the governmental body receives the requestor's clarification or narrowing response). However, you have not stated, and the submitted correspondence does not demonstrate, that you asked the requestor to clarify or narrow the scope of an unclear or broad request. Thus, we find that the ten business day deadline was not tolled by the comptroller's October 28 letter to the requestor. *See* Open Records Decision No. 663 at 2-5 (1999) (addressing circumstances under which governmental body's communications with a requestor to clarify or narrow request will toll ten business day deadline). Consequently, we find that the comptroller failed to request a decision from this office within the ten business day period mandated by section 552.301(b) 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.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Section 552.101 provides a compelling reason to overcome the presumption of openness.

See Open Records Decision No. 630 (1994) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). We will therefore address your arguments under section 552.101.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information that other statutes make confidential.

You inform us that the information at issue pertains to coin-operated machines regulated by the comptroller under chapter 2153 of the Occupations Code. *See* Occ. Code § 2153.051 (duties of comptroller in administering chapter 2153, regulating coin-operating machines). Section 2153.101 of the Occupations Code provides as follows:

- (a) Except as provided by Subsection (b), information contained in a license application is confidential.
- (b) After a license is issued under this chapter, the ownership statement contained in the license application is a public record.

Section 2153.102 of the Occupations Code provides as follows:

Except for information specifically designated as a public record, information derived from a book, record, report, or application required to be made available under this chapter to the comptroller or attorney general:

- (1) is confidential; and
- (2) may only be used to enforce this chapter.

The documents in the submitted sample consist of several license and tax permit applications, and several ownership statements from license applications. Upon review, we agree that the information contained in the license and tax permit applications is generally confidential under sections 2153.101 and 2153.102 of the Occupations Code. Accordingly, we determine the comptroller must withhold the information in the license and tax permit applications pursuant to section 552.101 of the Government Code as information made confidential by law.

Next, you advise that you have released the ownership statement forms to the requestor. You state, however, that you have redacted certain information that you believe to be confidential. In particular, you contend that social security numbers contained in the ownership statements may be excepted from disclosure under section 552.101. Furthermore, you contend that Texas driver’s license numbers contained in the ownership statements are excepted from disclosure under section 552.130.

Section 2153.101(b) of the Occupations Code provides that “the ownership statement contained in the license application is a public record” after the license is issued. Occ. Code § 2153.101(b). Thus, after the license is issued, the ownership statement contained in the license application is expressly made public by statute. Information expressly made public by a statute other than the Public Information Act (the “Act”) may not be withheld pursuant to exceptions to required disclosure provided in the Act. *See* Gov’t Code § 311.026 (where a general statutory provision conflicts with a specific provision, the specific provision prevails as an exception to the general provision); *see also* Open Records Decision Nos. 623 (1994), 525 (1989) (as a general rule, Act’s exceptions do not apply to information made public by other statutes). In this case, the licenses in question have been issued. Consequently, we determine that driver’s license numbers contained in the ownership statements are expressly public under section 2153.101(b) of the Occupations Code and cannot be withheld from disclosure pursuant to section 552.130 of the Government Code.

With respect to the social security numbers, we note that 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 note that the federal Social Security Act can preempt section 2153.101(b) of the Occupations Code. *See Maryland v. Louisiana*, 451 U.S. 725, 746 (1981) (if a state law conflicts with federal law properly enacted by Congress within its constitutional authority, the state law is preempted and has no effect). You contend that the social security numbers at issue are confidential pursuant to section 56.001 of the Occupations Code, which provides that “[t]he social security number of an applicant for or holder of a license . . . that is provided to the licensing agency is confidential.” Occ. Code § 56.001. We note, however, that section 56.001 is not a provision of law pursuant to which the comptroller obtained and maintains the social security numbers at issue. Thus, we determine that section 56.001 of the Occupations Code does not provide a basis by which the comptroller must withhold the social security numbers under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I).² Consequently, we make the following determination: to the extent the comptroller obtained and maintained the social security numbers at issue pursuant to another provision of law enacted on or after

² We also note that to the extent section 2153.101(b) of the Occupations Code conflicts with section 56.001 of the Occupations Code, we find that section 2153.101(b) more specifically governs the public availability of the information in the ownership statements at issue and trumps the more general confidentiality provision in section 56.001. *See Lufkin v. City of Galveston*, 63 Tex. 437 (1885) (when two sections of an act apply, and one is general and the other is specific, then the specific controls); *see also* Gov’t Code § 311.026 (where a general statutory provision conflicts with a specific provision, the specific provision prevails as an exception to the general provision).

October 1, 1990, the social security numbers are confidential and must be withheld under 552.101 in conjunction with federal law. If the comptroller has not obtained and maintained the social security numbers at issue pursuant to another provision of law enacted on or after October 1, 1990, we determine that the social security numbers must be released to the requestor pursuant to section 2153.101(b) of the Occupations Code.

In summary, the comptroller must withhold the responsive license and tax permit applications pursuant to section 552.101 of the Government Code in conjunction with sections 2153.101 and 2153.102 of the Occupations Code. If the comptroller obtained and maintains the social security numbers in the ownership statements pursuant to a provision of law enacted on or after October 1, 1990, the social security numbers are confidential and must be withheld under section 552.101 in conjunction with federal law. Otherwise, the comptroller must release the social security numbers to the requestor. The remainder of the information in the ownership statements must be released pursuant to section 2153.101(b) of the Occupations Code.

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/seg

Ref: ID# 175803

Enc: Submitted documents

c: Mr. David Fisher
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(w/o enclosures)