



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

March 4, 2003

Ms. Jan Clark
Assistant City Attorney
City of San Marcos
630 E. Hopkins
San Marcos, Texas 78666

OR2003-1403

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177301.

The City of San Marcos (the "city") received a request for the police report, written statements, photographs and audio tapes pertaining to an automobile accident in which the requestor's client was involved. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. You state that the city received the request for information on December 5, 2002. However, the city did not send its request for a decision from this office until December 20, 2002. Moreover, the city did not assert section 552.130 as an exception to disclosure until December 27, 2002, which was more than ten business-days after the city's receipt of the request. Consequently, the city failed to comply with the requirements of section 552.301(b) of the Government Code.

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 information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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). You contend that the information requested is excepted under sections 552.108 and 552.130 of the Government Code. However, you have not demonstrated a compelling reason for withholding this information under section 552.108. *See* Open Records Decision No. 473 at 2 (1987) (discretionary exceptions under the Public Information Act can be waived); *but see* Open Records Decision No. 586 (1991) (when a governmental body fails to timely seek an attorney general decision under the Public Information Act, the need of another governmental body may provide a compelling reason for withholding the requested information). Nonetheless, as section 552.130 of the Government Code provides a compelling reason to overcome the presumption of openness, we will address your argument under that exception. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). We also note that portions of the submitted information may be protected under sections 552.101 and 552.119 of the Government Code.

Section 552.130 protects from disclosure driver's license and motor vehicle information. 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[.]

The submitted information contains driver's license numbers and motor vehicle information. We have marked the driver's license numbers and motor vehicle information within the police report that must be withheld under section 552.130. You must also withhold any photographs of Texas Certificates of Title for motor vehicles, vehicle identification numbers, and Texas license plate numbers, as well as any motor vehicle information contained within the remaining submitted information, under section 552.130.

Additionally, the submitted information contains social security numbers that may be excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if they were obtained or are maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. *See* Open Records Decision No. 622 (1994). However, it is not apparent to us that the social security numbers contained in the information at issue were obtained or are maintained by the city 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. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are, therefore, confidential under section 405(c)(2)(C)(vii)(I). We caution the city, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number, the city should ensure that these numbers were not obtained or are not maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

Lastly, we note that the submitted documents include information to which section 552.119 is applicable. Section 552.119 excepts from public disclosure a photograph of a peace officer 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. Open Records Decision No. 502 (1988). The submitted photographs depict peace officers, and you have not stated that any of the exceptions are applicable. Additionally, it does not appear that the peace officers have executed any written consent to disclosure. Thus, you must withhold under section 552.119 the photographs depicting peace officers unless the photographed individual is no longer a "peace officer," in which case you must release the photograph.

In summary, we have marked the driver's license numbers and motor vehicle information within the police report that must be withheld under section 552.130. You must also withhold any photographs of Texas Certificates of Title for motor vehicles, vehicle identification numbers, and Texas license plate numbers, as well as any motor vehicle information contained within the remaining submitted information, under section 552.130. The city must also withhold any photographs of peace officers under section 552.119 unless the photographed individual is no longer a peace officer. Lastly, prior to releasing any social security number, the city should ensure that the number was not obtained or is not maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. The city must release the remaining information.

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 Dep't of Pub. 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,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/sdk

Ref: ID# 177301

Enc: Submitted documents

c: Mr. Tom Rowatt
Lawyer
5629 FM 1960 West, Suite 313
Houston, Texas 77069
(w/o enclosures)