



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 4, 2003

Mr. Brett Bray
Director, Motor Vehicle Division
Texas Department of Transportation
P.O. Box 2293
Austin, Texas 78768

OR2003-1405

Dear Mr. Bray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177345.

The Texas Department of Transportation (the "department") received a request for driver's license and other information relating to a named individual. You state that the department is not in possession of some of the requested information. Chapter 552 of the Government Code does not require the department to release information that did not exist when it received this request or to create responsive information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). You state that the department will release the rest of the requested information, with the exception of the individual's Texas driver's license number. You ask whether the department must withhold the Texas driver's license number. We have considered your arguments and have reviewed the information you submitted.

Section 552.130 of the Government Code is applicable to Texas driver's license information. This exception provides in part:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

...

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Gov't Code § 552.130(a)(1), (b). Thus, an individual's Texas driver's license number may be released only if, and in the manner, authorized by chapter 730 of the Transportation Code.

Chapter 730 codifies the Motor Vehicle Records Disclosure Act. *See* Transp. Code § 730.001. Section 730.007 provides in part:

(a) Personal information obtained by an agency in connection with a motor vehicle record may be disclosed to any requestor by an agency if the requestor:

(1) provides the requestor's name and address and any proof of that information required by the agency; and

(2) represents that the use of the personal information will be strictly limited to:

(A) use by:

(i) a government agency, including any court or law enforcement agency, in carrying out its functions[.]

...

(b) The only personal information any agency may release under this section is the individual's:

(1) name and address;

(2) date of birth; and

(3) driver's license number.

Id. § 730.007(a)-(b). "Personal information" is defined as including a "driver identification number." *Id.* § 730.003(6). "Motor vehicle record" means "a record that pertains to a motor vehicle operator's or driver's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state or a local agency authorized to issue an identification document." *Id.* § 730.003(4). In this instance, the requested driver's license number is clearly "personal information" for purposes of section 730.007(a).

You do not inform us, however, and we are not otherwise able to ascertain whether this driver's license number was obtained in connection with a motor vehicle record for purposes of section 730.007(a).

We note, however, that the requestor states that the driver's license number will be used by a law enforcement agency in carrying out its functions. Furthermore, the requestor has provided the department with her name and address and the name of her law enforcement agency. Therefore, we conclude that to the extent that the requested driver's license number was obtained in connection with a motor vehicle record, as defined by section 730.003(4), and to the extent that the requestor has provided any proof of her name and address that the department may require, the department has the discretion to release the requested driver's license number. *See* Transp. Code § 730.007(a); *see also* Gov't Code § 311.016. The department is not required, however, to release the driver's license number, even if the criteria in section 730.007(a) are met. Furthermore, if the driver's license number was not obtained in connection with a "motor vehicle record," as defined by section 730.003(4), or if the requestor has not provided any required proof of her name and address, then the department must withhold the driver's license number under section 552.130 of the Government Code.

You also ask this office to issue a previous determination with respect to whether Texas driver's license numbers contained in the files of the Motor Vehicle Division of the department can be released to an agency of another state. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). We decline to do so at this time. 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

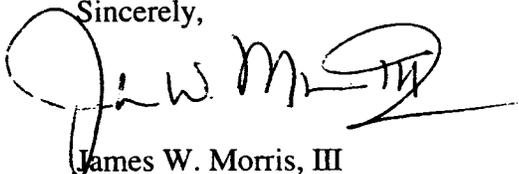
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 177345

Enc: Submitted documents

c: Ms. Sherry A. Saulters
Telluride Marshal's Department
P.O. Box 372
Telluride, Colorado 81435
(w/o enclosures)