



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2003

Mr. John C. Grace
Assistant District Attorney
County of Lubbock
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2003-7311

Dear Mr. Grace:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189408.

The Lubbock County Registrar (the "registrar") received a request for four categories of information regarding voter card applications.¹ You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.² We have also considered comments submitted to this office 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).

¹You state that you "believe the request for information is overly broad." We note that when the registrar is unclear as to what documents are being requested, you may seek clarification from the requestor as to the type or nature of the documents being requested. *See Gov't Code* § 552.222(b) (authorizing governmental body's request for clarification of records request); *see also* Open Records Decision No. 663 at 5 (1999) (discussing requests for clarification).

²We 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). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note that pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office a copy of the written request for information.

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). Normally, a compelling reason for non-disclosure exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). As you assert section 552.101 of the Government Code, we will address it accordingly.

Section 552.101 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. You assert section 13.103 of the Election Code, which provides that voter registration application files "shall be kept in the registrar's office at all times in a place and manner ensuring their security." *See Elec. Code § 13.103(a)*. However, this section does not expressly make information confidential for the purposes of the Public Information Act (the "Act"). *See Open Records Decision Nos. 658 at 4 (1998), 649 at 3 (1996) (language of confidentiality provision controls scope of protection), 478 at 2 (1987) (statutory confidentiality requires express language making information confidential or stating information shall not be released to public), 465 at 4-5 (1987)*. Confidentiality cannot be implied from the structure of a statute or rule. *See Open Records Decision No. 465 at 4-5 (1987)*. Therefore, the submitted information may not be withheld under section 552.101 of the Government Code in conjunction with section 13.103 of the Election Code.

However, section 13.004(c) of the Election Code provides that "a social security number, Texas driver's license number, or number of a personal identification card issued by the Department of Public Safety furnished on a registration application is confidential and does not constitute public information." Act of May 28, 2003, 78th Leg., R.S., ch. 606, § 2 2003 Tex. Sess. Law Serv. 1983 (to be codified at Elec. Code § 13.004(c)). Therefore, we conclude that the registrar must withhold the social security numbers, Texas driver's license

numbers, and personal identification numbers on the requested registration applications under section 552.101 of the Government Code in conjunction with section 13.004 of the Election Code. All remaining requested information must be released to the extent it exists.

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).

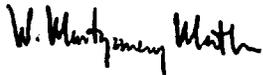
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 189408

Enc: Submitted documents

c: Mr. Clif D. Burnett
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(w/o enclosures)