



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 26, 2004

Ms. Loren B. Smith
Olson & Olson
Three Allen Center
333 Clay Street, Suite 3485
Houston, Texas 77002

OR2004-1445

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 196814.

The City of Friendswood (the "city"), which you represent, received a request for a specified "report for call" and arrest report. You state that the city has released or will release some of the requested information to the requestor. You claim, however, that the remaining requested information is excepted from disclosure pursuant to sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code. Subsections 552.301(a) and (b) of the Public Information Act (the "Act") provide:

(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 [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 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). You state that the city received the request for information on December 1, 2003. Therefore, the city had until December 15, 2003 to submit a request for decision to this office and state the exceptions to disclosure that apply to the requested information. However, we note that the city did not submit its request for decision to us until December 17, 2003. Therefore, we find that the city failed to comply with section 552.301 of the Government Code in requesting this decision from us.

Because the city failed to comply with the procedural requirements of section 552.301, the information at issue is now presumed public. *See* Gov't Code § 552.302; *see also* *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 city must demonstrate a compelling interest in order to overcome the presumption that the information at issue is now public. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although the city claims that the information at issue is excepted from disclosure under section 552.103 of the Government Code, we note that this exception to disclosure is a discretionary exception to disclosure under the Act that protects a governmental body's interests and may be waived by the governmental body. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Further, although the city claims that the information at issue is excepted from disclosure under section 552.108 of the Government Code, we note that it has not demonstrated a compelling interest under this exception to disclosure in this instance that would allow any portion of the information at issue to be withheld from disclosure. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108 in certain circumstances). Because the city failed to comply with section 552.301 of the Government Code in requesting this decision from us, it waived its section 552.103 and 552.108 claims with regard to the information at issue. Accordingly, we conclude that the city may not withhold any portion of the information at issue under section 552.103 or section 552.108 of the Government Code.

However, we note that the submitted information contains social security numbers that may be excepted from disclosure pursuant to section 552.101 of the Government Code in

conjunction with federal law.¹ The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers 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* Open Records Decision No. 622 (1994). The city has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain these social security numbers. Therefore, we have no basis for concluding that they are confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. 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 these social security numbers, the city should ensure that they were not obtained or are not maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

We also note that information must be withheld from disclosure under section 552.101 in conjunction with the common-law right to privacy when (1) it is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure.² *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's common-law right to privacy in a manner that the same individual records in an uncompiled state do not. *See United States Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). Accordingly, we conclude that to the extent that the city maintains responsive information that reveals that an individual, other than the requestor, is a suspect, arrestee, or defendant, such information must be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

Finally, we note that portions of the submitted information are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, we conclude that the city must withhold the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code.

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

² Section 552.101 also encompasses information that is protected from disclosure pursuant to the common-law right to privacy.

In summary, social security numbers contained within the submitted information may be confidential under federal law. To the extent that the city maintains responsive information that reveals that an individual, other than the requestor, is a suspect, arrestee, or defendant, such information must be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The city must withhold the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code. The city must release the remaining submitted information 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).

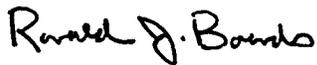
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 196814

Enc. Marked documents

c: Mr. Matthew Arp
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Friendswood, Texas 77546
(w/o enclosures)