ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 6, 2004

Captain Randy Traylor
Administrative Services
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2004-2785

Dear Captain Traylor:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 198840.

The Williamson County Sheriff (the "sheriff") received a request for all information relating to two named individuals and a specific address. You do not claim that the requested information is excepted from disclosure, but rather ask that we review the information to ensure that the rights of both the requestor and the individuals about whom information has been requested are protected.

Initially, we must address the sheriff's obligations under the Act. The Act does not permit a governmental body that receives a request for information to simply submit the information to this office and ask that we ensure that the rights of all involved parties are protected. Responsibility for making an initial determination about what information can or must be withheld from disclosure lies with the governmental body that receives the request for information. If the governmental body does not wish to withhold requested information under discretionary exceptions to disclosure and does not believe such information to be subject to mandatory exceptions or otherwise confidential by law, the governmental body must release the requested information as soon as possible under the circumstances. *See* Open Records Decision No. 664 (2000). If, however, the governmental body wishes to withhold requested information under discretionary exceptions or believes the requested information cannot lawfully be released, the governmental body is required to request a ruling from this office and comply with the procedural requirements outlined in section 552.301of the Government Code. *See generally* Gov't Code § 552.301.

Pursuant to section 552.301(b), a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). Within fifteen business days of receiving the request, the governmental body must submit to this office (1) 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. *Id.* § 552.301(e)(1)(A)-(D). You have not claimed any exceptions to disclosure and have not provided any written explanation as to why any of the submitted information should be withheld from disclosure. Additionally, you have not provided a signed statement or sufficient evidence showing the date the sheriff received the written request for information. We therefore conclude that the sheriff failed to comply with section 552.301 in requesting this ruling.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists 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 section 552.302); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). We will therefore consider whether any of the submitted information is confidential.[1]

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common law privacy. 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 right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). However, information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common law privacy and *Reporters Committee*. *Cf.* Gov't Code § 411.082(2)(B). In this instance, the requestor asks for all information concerning two named individuals. In this case, we believe that these individuals' rights to privacy have been implicated. Thus, where the named individuals are possible suspects or arrestees in incidents other than routine traffic violations, we conclude that you must withhold this information under common law privacy as encompassed by section 552.101 of the Government Code. *See id.*

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[1]The Office of the Attorney General will raise mandatory exceptions like sections 552.101 and 552.130 on behalf of a governmental body but will not ordinarily raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

We note that the submitted information contains social security numbers which 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 have no basis for concluding that any of the social security numbers in the submitted information are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the sheriff pursuant to any provision of law, enacted on or after October 1, 1990.

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[.]

Therefore, you must withhold the Texas driver's license numbers, vehicle identification number, and license plate numbers we have marked under section 552.130.

In summary, where the named individuals are possible suspects or arrestees in incidents other than routine traffic violations, you must withhold this information under common law privacy as encompassed by section 552.101 of the Government Code. Social security numbers may also be excepted from disclosure under section 552.101 in conjunction with federal law. You must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.

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,

Karen Hattaway
Assistant Attorney General
Open Records Division

KEH/sdk

Ref: ID# 198840

Enc. Submitted documents

c: Ms. Susan A. Chabert
c/o Captain Randy Traylor
Administrative Services
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626
(w/o enclosures)