



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 22, 2004

Ms. Patricia J. Acosta  
Assistant District Attorney  
Office of the District Attorney, 34<sup>th</sup> Judicial District  
500 East San Antonio Street, 2<sup>nd</sup> Floor  
El Paso, Texas 79901-2420

OR2004-5062

Dear Ms. Acosta:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204027.

The Office of the District Attorney, 34<sup>th</sup> Judicial District (the "district attorney") received a request for fourteen categories of information pertaining to a specified individual and cause number. You state that some of the requested information has been released to the requestor. You claim, however, that the remaining requested information is excepted from disclosure pursuant to sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that you indicate that portions of the submitted information are not responsive to the request for information. Accordingly, this ruling does not address the public availability of this particular information and it need not be provided to the requestor in response to this ruling.

You claim that portions of the submitted responsive information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with sections 560.001, 560.002, and 560.003 of the Government Code.<sup>1</sup> 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.

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<sup>1</sup> These sections, formerly found at chapter 559 of the Government Code as sections 559.001, 559.002, and 559.003, were renumbered by the Regular Session of the Seventy-eighth Legislature, effective September 1, 2003. *See* Gov't Code §§ 560.001 *et seq.*

Section 552.101 encompasses information that is protected from disclosure by other statutes. Sections 560.001, 560.002, and 560.003 govern the public availability of fingerprint information and provide as follows:

Sec. 560.001. DEFINITIONS. In this chapter:

- (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
- (2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 560.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

- (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
  - (A) the individual consents to the disclosure;
  - (B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or
  - (C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and
- (2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 560.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

Gov't Code §§ 560.001, 560.002, 560.003. Based on our review of your representations and the particular information at issue, we agree that this information is encompassed by chapter 560 of the Government Code. It does not appear that the requestor has a right of access to this information under section 560.002. Accordingly, we conclude that the district attorney must withhold the fingerprint information that you have marked pursuant to section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

You also claim that a social security number contained within the submitted responsive information is excepted from disclosure pursuant to section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). These amendments 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 district attorney 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 social security numbers. Thus, we have no basis for concluding that this social security number is confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution the district attorney, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing this social security number, the district attorney should ensure that it was not obtained and is not maintained by the district attorney pursuant to any provision of law enacted on or after October 1, 1990.

Finally, you claim that a portion of the submitted responsive information is excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information 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. Based on our review of the particular information at issue, we agree that the district attorney must withhold this information pursuant to section 552.130 of the Government Code.

In summary, the district attorney must withhold the information that you have marked pursuant to section 552.130 of the Government Code and section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. A social security number contained within the submitted responsive information may be confidential under federal law.

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).

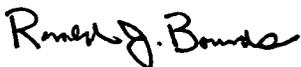
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

Ref: ID# 204027

Enc. Submitted documents

c: Mr. John S. Lopez  
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(w/o enclosures)